TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~385~~ 135

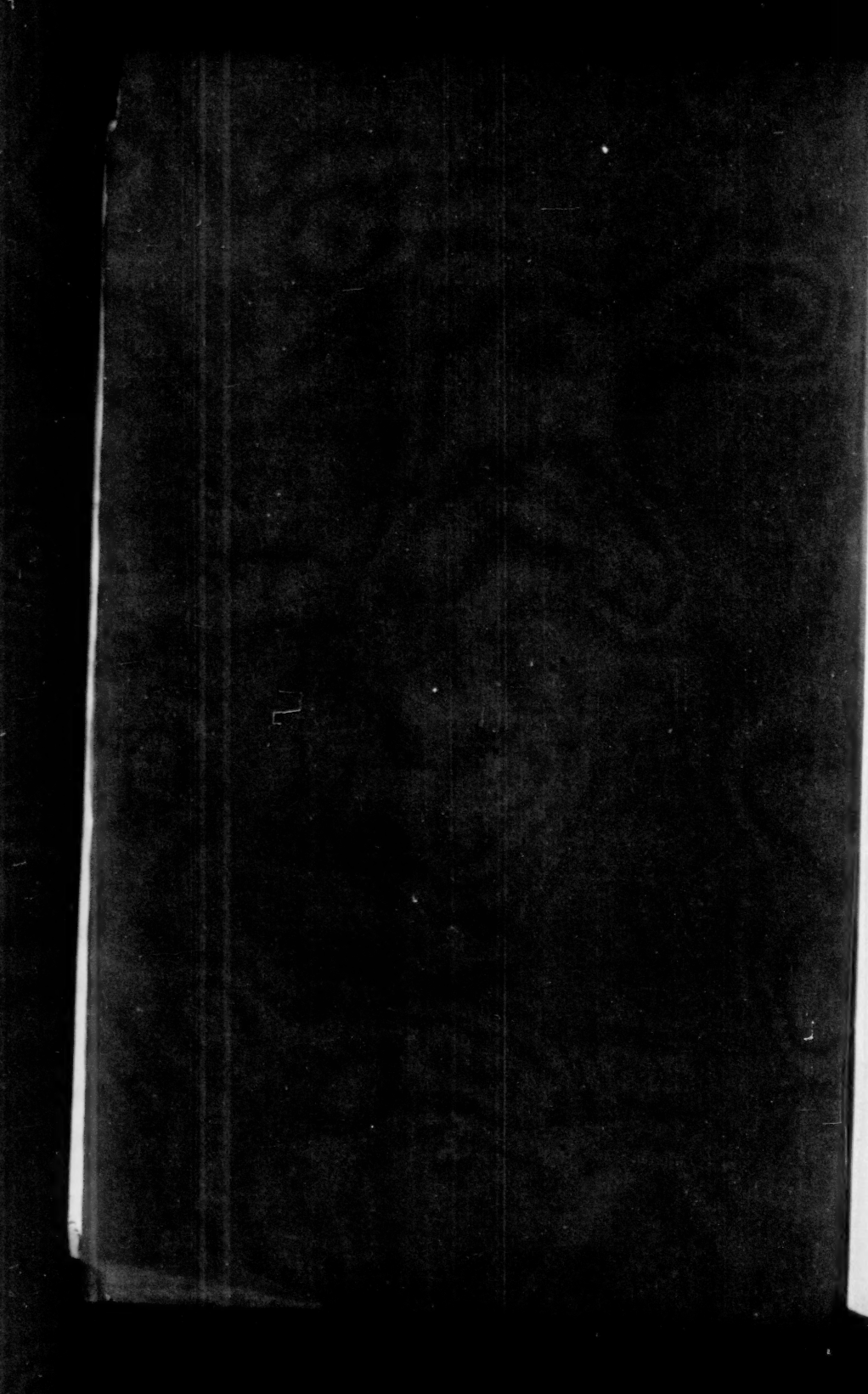
THE HOME INSURANCE COMPANY —

vs.

CHARLES WEIDE AND JOSEPH R. WEIDE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED DECEMBER 8, 1869.



SUPREME COURT OF THE UNITED STATES.

No. 335.

THE HOME INSURANCE COMPANY

vs.

CHARLES WEIDE AND JOSEPH R. WEIDE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America in and for the district of Minnesota, greeting:

Because, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Charles Weide and Joseph R. Weide, plaintiffs, and The Home Insurance Company, defendant, in a plea which is in the said circuit court, a manifest error hath happened, to the great damage of the said The Home Insurance Company, defendant, as it says, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the sixth day (the first Monday) in December next, in
2 the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in said district of Minnesota, this third day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth year.

[SEAL.] H. E. MANN,
Clerk United States Circuit Court, District of Minnesota.

LAMPREYS,
JOHN B. BRISBIN,
Attorneys for Plaintiffs in Error.

(Indorsed:) U. S. circuit court, district of Minn. Cha's Weide et al. vs. Home Ins. Co. Writ of error.
Filed August 4, 1869.

H. E. MANN, *Clerk*,
By W'M A. SPENCER, *D'p'y.*

3 *The answer of the judges of the circuit court of the United States for the district of Minnesota, in the foregoing writ mentioned.*

The record and proceedings, whereof mention is in said writ made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States therein mentioned, in a certain schedule to this writ annexed, as therein it is commanded.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in the district of Minnesota, this sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine and of our independence the ninety-fourth year.

[SEAL.] H. E. MANN, *Clerk.*

4 UNITED STATES OF AMERICA, *ss:*

To Charles Weide and Joseph R. Weide, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and district of Minnesota, wherein The Home Insurance Company of New York is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this third day of August, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] R. R. NELSON,
Judge of the Circuit Court of the United States for the Eighth Circuit and District of Minnesota.

LAMPREYS and
JOHN B. BRISBIN,
Attorneys for Plaintiff in Error.

5 (Indorsed:) United States circuit court, district of Minnesota. Cha's Weide et al. vs. The Home Ins. Co. Citation.

Service of the within citation by copy is admitted at St. Paul, in said district of Minnesota, this 4th day of August, 1869.

ALLIS, GILFILLAN & WILLIAMS,
Attorneys for Def'ts in Error.

Filed August 4, 1869.

H. E. MANN, *Clerk.*
By W'M A. SPENCER, *Dep'y.*

Lampreys & John B. Brisbin, attorneys for pl'ff in error.

DISTRICT OF MINNESOTA, *ss:*

H. R. Brill came before me personally, and, being first duly sworn, doth depose and say that, on the 14th day of August, 1869, at St. Paul, in said district, he personally served the within citation on Allis, Gilfillin & Williams, well known to him to be the attorneys of said defendant in error in this cause, by handing to and leaving with Henry L. Williams, well known to this deponent to be one of said firm of Allis, Gilfillan & Williams, attorneys of defendant in error as aforesaid, a copy of the same then and there.

H. R. BRILL.

Subscribed and sworn to before me this 4th day of August, 1869.

W'M A. SPENCER,
U. S. Commissioner.

6 *Schedule.*

Circuit court of the United States of America for the district of Minnesota.

CHARLES WEIDE AND JOSEPH R. WEIDE
vs.
THE HOME INSURANCE COMPANY. } Pleas.

Before the hon. the judges of the circuit court of the United States for the district of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that, on this 21st day of October, in the year of our Lord one thousand eight hundred and sixty-seven, the clerk of the district court for the second judicial district, county of Ramsey, and State of Minnesota, filed in the clerk's office of said circuit court his duly certified return in the words and figures following, viz:

State of Minnesota, county of Ramsey, second judicial district, district court.

CHARLES WEIDE AND JOSEPH R. WEIDE
ag'st
THE HOME INSURANCE COMPANY.

The State of Minnesota to the above-named defendant, greeting:

You are hereby summoned and required to answer the com-
7 plaint of the plaintiffs in the above-entitled action, which has been filed with the clerk of this court at his office in the court-house, in Saint Paul, in the county aforesaid, and to serve a copy of your answer to the said complaint upon the subscriber, at his office in the city of Saint Paul, in the State aforesaid, within twenty days after the service of this summons upon you, exclusive of the day of service, and if you fail to answer the said complaint within the time aforesaid, the said plaintiff will take judgment against you for the sum of four thousand dollars, with interest thereon from the 25th day of May, A. D. 1867, and the costs of this action.

ALLIS, GILFILLAN & WILLIAMS,
Plaintiff's Attorney.

STATE OF MINNESOTA, *County of Ramsey, ss:*

I certify and return that I have, on the 13th day of July, A. D. 1867, served the within summons on the within-named defendant, by delivering to S. S. Eaton, managing agent of said company's business at St. Paul, a true and correct copy thereof, at St. Paul, in my county.

Fees, 1 40.

D. A. ROBERTSON,
Sheriff of Ramsey County,
By JOHN GREEN, *Deputy.*

Filed July 18, 1867.

ALBERT ARMSTRONG, *Clerk.*

State of Minnesota, dist. court, county of Ramsey, 2nd judicial district.

CHARLES WEIDE AND JOSEPH R. WEIDE
vs.
8 THE HOME INSURANCE COMPANY.

The plaintiff, for cause of action against the defendant, herein respectfully shows to the court that they are and, at the times hereinafter mentioned, were citizens and residents of the State of Minnesota, and during said times were copartners in business as merchants, at the city of St. Paul, in said State, under the firm name and style of Cha's Weide & Bro; that, during all the times hereinafter mentioned, the defendant was and now is a corporation duly incorporated and organized as a fire insurance company, under and by virtue of the laws of the State of New York, and was and now is doing and transacting its business of insuring against loss or damage by fire within the State of Minnesota, under and by authority of the laws thereof; that, on the 24th day of October, 1867, at St. Paul aforesaid, the defendant, in consideration of the sum of forty dollars, to it then and there paid by the plaintiffs, did, by its certain policy of insurance, by it duly executed and delivered to the plaintiffs, insure them to the amount of four thousand dollars against loss or damage by fire for the term of one year from said day, on their stock of groceries, nails, hollow ware, and other merchandise contained in the three-story brick store situated on the southerly side of Third street between Robert and Minnesota streets, St. Paul proper, and in and by said policy, for the consideration aforesaid, the defendants did promise and agree unto and with these plaintiffs to make good unto them, their executors, administrators, or assigns, all such loss or damage by fire, not exceeding said sum of four thousand dollars, as should happen to the said property during the period
9 of one year from said date, said loss or damage to be estimated according to the actual cash value of the property at the time the same should happen, and to pay them the amount of such loss or damage within sixty days after due notice and proof thereof made by plaintiffs, in conformity to the condition annexed to said policy; that the condition annexed to said policy and referred to in said promise was in the following words, that is to say: "Persons sustaining loss or damage by fire shall forthwith give notice thereof in writing to the company or its agent, and as soon after as possible they shall deliver as particular an account of the loss and damage as the nature of the case will admit, signed with his own hands, and they shall accompany the same with their oath or affirmation, declaring the said account to be true and just, showing also the ownership of the property insured; what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured or containing the subject insured and the several parts thereof were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also produce a certificate, under the hand and seal of a magistrate, notary public, or commissioner of deeds most contiguous to the place of the fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers, stating that he has examined into the circumstances attending the fire, loss, or damage alleged, and that he is acquainted

10 with the character and circumstances of the insured or claimant, and that he verily believes that he, she, or they have, by misfortune and without fraud or evil practice, sustained loss or damage on the subject insured, to the amount which such magistrate, notary public, or commissioner of deeds shall certify."

And after the execution and delivery of such policy of insurance, to wit, on the 22nd day of February, 1867, the building in which said property so insured was contained was burned, and said property so insured was totally destroyed by fire; that the actual cash value of such property, at the time of such destruction, was seventy thousand six hundred fifty-four $\frac{85}{100}$ dollars.

And forthwith, after such loss, the plaintiffs gave notice thereof in writing to the defendant, signed with their own hands; and as soon thereof as possible, to wit, on the 25th day of March, 1867, they did deliver to defendant as particular an account of the loss and damage as the nature of the case would admit, signed with their own hands, and accompanied the same with their oath declaring the said account to be true and just, showing that they were the owners of the property insured; the amount of other insurance that existed on the said property, and giving a copy of the written portion of the policy of each company; showing also the whole cash value of said property at the time of said loss; their interest therein; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building containing said property and the several parts thereof were occupied at the time of such loss, and who were the occupants of such building; and when and how the fire originated, so far as they knew or believed. And they did

11 also then produce and deliver to defendant a certificate, under the hand and seal of a notary public most contiguous to the place of the fire, and not concerned in the loss as a creditor or otherwise, related to the plaintiffs, stating that he had examined the circumstances attending the fire, loss, and damage aforesaid; that he was acquainted with the character and circumstances of these plaintiffs; and that he verily believed that they had, by misfortune and without any fraud or evil practice, sustained loss and damage on the property so insured to the amount of seventy thousand six hundred fifty-four $\frac{85}{100}$ dollars.

And they further say that they were, at the time of said destruction by fire, the owners of the property so insured and so destroyed, and there was insurance on the same at the time of said loss to the amount of fifty-one thousand dollars other than that of defendant hereinbefore stated.

And they further say that more than sixty days have elapsed since said notice was given and said proof made as aforesaid; but the defendant has failed and neglected, and still does fail and neglect, to make good or pay to them said amount, or any part thereof, although plaintiffs have, since the lapse of said sixty days, demanded the same from defendant.

And they therefore demand judgment against defendant for the sum of four thousand dollars, with interest from the 25th day of May, 1867, and their costs of suit.

ALLIS, GILFILLAN & WILLIAMS,
Pl'ffs' Attorneys.

STATE OF MINNESOTA, *County of Ramsey, ss:*

12 Charles Weide, being duly sworn, says that he is one of the plaintiffs named in the foregoing complaint, and that the said complaint is true of his own knowledge except as to matters which are

therein stated on his information and belief, and as to those matters that he believes it to be true.

CHARLES WEIDE.

Sworn and subscribed before me this 2nd day of July, 1867.
J. HAM. DAVIDSON,
Notary Public Ramsey County, Minnesota.

(Indorsed:) 4714. District court, Ramsey County. Cha's Weide & Bro. vs. The Home Ins. Co., complainant.
Filed July 6, 1867.

ALBERT ARMSTRONG, *Clerk.*

Allis, Gilfillan & Williams, pl'ffs' attorneys.

State of Minnesota, county of Ramsey, district court, second district.

CHARLES WEIDE AND JOSEPH R. WEIDE
against
THE HOME INSURANCE COMPANY.

And now the petition of said defendant in this case for the removal of this cause to the circuit court of the United States for the district of Minnesota, for trial, having come on to be heard before this court upon such petition, and a bond and security duly approved by this court, and filed therein in said cause, and all the papers and proceedings, and the complaint and process in said cause, after hearing Lampreys, attorneys, and of counsel for said defendant, in favor of said petition, upon
13 due advisement, it is ordered herein that said petition be, and the same is hereby, granted, and the said cause above entitled is hereby removed from this court into the next circuit court of the United States to be holden in and for the district of Minnesota, according to the act of Congress in such case provided.
By the court,

W. WILKIN,
District Judge.

JULY 29, 1867, 10 *o'clock a. m.*

(Indorsed:) 4714. Ramsey County district court. Charles Weide et al. vs. The Home Insurance Company. Order.

Due service of the within order, by copy, is hereby admitted this July 29th, 1867.

ALLIS, GILFILLAN & WILLIAMS,
Pl'ffs' Att'y.

Filed July 29th, 1867.

ALBERT ARMSTRONG, *Clerk.*

Lampreys & Brisbin & Warner, defendant's att'ys.

STATE OF MINNESOTA, *Ramsey County:*

I, Albert Armstrong, clerk of the district court, second judicial district, for county and State aforesaid, do hereby certify that I have compared the foregoing copies with the original, summons, complaint, and order granting removal, with indorsements thereon, on file, and that the

same are correct transcripts thereof, and the whole of the same, and that said originals remain of record in my office.

Witness my hand and seal of said court, at St. Paul, this 15th day of August, A. D. 1867.

14 ALBERT ARMSTRONG,

[SEAL OF SAID DIS'T COURT.] *Clerk.*

[5-ct. rev. stamp cancelled.]

And afterwards, to wit, on the 21st day of October, 1867, came the defendant, by Lampreys & Brisbin & Warner, their attorneys, and filed in the clerk's office for said circuit court their præcipe for appearance in said cause.

And afterwards, to wit, on the 26th day of December, A. D. 1867, came the said defendants by Messrs. Lampreys & Brisbin & Warner, its attorneys, and filed in the clerk's office for said circuit court their answer to the plaintiffs' complaint in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT, *District of Minnesota, ss:*

CHARLES WEIDE AND JOSEPH R. WEIDE
against
HOME INSURANCE COMPANY.

The answer of said defendant to the complaint of said plaintiffs in this cause shows to this court and states—

First. The said defendant expressly and specifically denies each and every allegation and statement, matter and thing, and every part of the same, in said complaint contained, as therein stated, or otherwise, save as hereinafter stated, admitted, or qualified. And said defendant admits that said plaintiffs were citizens and residents of the State of Minnesota, and copartners in business, under the firm name and

15 style of Cha's Weide & Bro., during the time, and as in that behalf stated in said complaint. And said defendant admits that it was and is a corporation, duly incorporated and organized as a fire insurance company, under and by virtue of the laws of the State of New York, and transacting and doing business of insuring against loss or damage by fire within the State of Minnesota, under and by virtue of the laws of said State, during the time in said complaint alleged.

Second. And further answering herein, said defendant doth admit, aver, and say that, on or about the 24th day of October, 1862, at St. Paul, in the State of Minnesota, the said defendant, in consideration of the sum of forty dollars, to be paid by Cha's Weide & Bro., then and there, and by its certain policy of insurance, by it duly executed and delivered to the said Cha's Weide & Bro., insure them, in the sum of four thousand dollars, against loss or damage by fire for the term of one year from said day, on their stock of groceries, nails, hollow ware, and other merchandise contained in the three-story brick building mentioned in said complaint, and situated as therein stated; and the said company did thereby, for the consideration aforesaid, promise and agree to make good to the said assured, their executors, or assigns, all such loss or damage, not exceeding in amount the sum insured, as should happen by fire to the property therein specified, for the year aforesaid, to be paid within sixty days after due notice and proof thereof made by the assured, in conformity to the conditions annexed to said policy. And the said policy provided, and it was agreed therein and thereby, by

16 [by] said parties, that the said company, among other things, should not be liable to make good any loss by theft at or after the fire; and also that, if the assured should make any attempt to defraud said company, then, and in every such case, said policy should be null and void, and in case of loss the assured should not be entitled to demand or recover on said policy any greater proportion of the loss or damage sustained to the subject insured than the amount thereby insured should bear to the whole amount insured on said property. And it was therein and thereby further provided that persons sustaining loss or damage by fire should forthwith give notice thereof in writing to the company or its agent, and, as soon after as possible, they should deliver as particular account of their loss and damage as the nature of the case would admit, signed with their own hands, and that they should accompany the same with their oath or affirmation, declaring said account to be true and just, showing also the ownership of the property insured; what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner as to trade, manufactory, merchandise, or otherwise, the building insured, or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they knew or believed; and that they should also produce a certificate, under the hand and seal of a magistrate, notary public, or commissioner of deeds most contiguous to the place of
17 the fire, and not concerned in the loss as creditor or otherwise, or related to the insured or sufferers, stating that he had examined the circumstances attending the fire, loss, or damage alleged, and that he is acquainted with the character and circumstances of the insured or claimant, and that he verily believes that he, she, or they have, by misfortune and without fraud or evil practice, sustained loss and damage on the subject insured, to the amount which such magistrate, notary public, or commissioner should certify; and that the assured should, if required, submit to an examination under oath by the agent or attorney of the company, and answer all questions touching his, her, or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and whenever required in writing, the insured or person claiming should produce and exhibit his books of account and other vouchers to the insurer or their agent, at the office of said company, in support of his claims, and permit extracts and copies thereof to be made, and should also produce certified copies of any bills or invoices of property destroyed or damaged, the originals of which might have been lost, mislaid, or destroyed; and until such proofs, declarations, and certificates should be produced, and such appraisals and examination of the property permitted by the claimant, the loss should not be payable. And it was further expressly provided therein that all fraud or attempt at fraud, by false swearing or otherwise, should cause a forfeiture of all claim on this company under said policy; and said policy was made and accepted upon the express terms and conditions above, and therein stated and thereto annexed, which were thereby declared
18 and made a part thereof; and that said policy was renewed and continued in force by said company from the 24th day of Oct., 1863, to the 24th day of October, 1864, and from the 24th day of October, 1864, to the 24th day of October, 1865, and from October 24th, 1865, to Oct. 24th, 1866, and from October 24th 1866, to October 24th,

1867, in consideration of the premium heretofore paid, to wit, by said insured, in every instance upon the same terms and conditions as aforesaid, and as therein stated; and that, after the execution and delivery of said policy of insurance, to wit, on or about the 22nd day of February, 1867, the said building was mostly burned, but as to whether said property, or any of the same so insured, was totally or partially, or to what extent the same or any of the same was, destroyed by the fire then or there, or at any time or place, defendant has not any knowledge or information thereof sufficient to form a belief, but said defendant expressly denies that the actual cash value, or the value of said property at the time of, or at or about the time of, such fire or alleged loss, was seventy thousand six hundred fifty-four $\frac{85}{100}$ dollars, or any greater sum than twenty thousand dollars in all.

And, further answering, said defendant admits, avers, and says herein that, on or about the 19th day of March, 1867, said plaintiffs gave notice thereof to said defendant, and rendered to it an account of said loss under oath, stating the time of the fire, occupancy of the building aforesaid at the time of the fire, and what other insurance was on the property, copies of other policies of insurance thereon, what they pretended to be the whole value of the property, and the amount of loss or damage thereto, and did produce and deliver to it the certificate
19 under seal of a notary public mentioned in said complaint containing the statement therein mentioned, but said defendant denies that said notice or proofs were, at any time or place, satisfactory to said company, or true or correct; that said defendant has no knowledge or information thereof sufficient to form a belief as to whether or not said plaintiffs were, at the time of said fire, or at any time, the owners of the said property, or any, or what part of any, of the same.

And said defendant admits, avers, and says that the whole sum insured upon said property was, and the said plaintiffs were insured thereon at the time of said fire and alleged loss in the further and additional sum of $50,600 over and above that of the said defendants above stated; and that more than sixty days have elapsed since the alleged service of said notice and proofs, and that payment thereof has been demanded of the said def't, and that the same has not been paid.

Third. And, further answering in this case, and for a further defence therein, said defendant charges the facts to be, alleges, and avers that heretofore, to wit, on or about March 19, 1867, and on or about March 30, 1867, and on or about April 3d, 1867, and at different times subsequent to the date of said fire and alleged loss, and prior to the date of the commencement of this action, at Saint Paul, said plaintiffs, and each of them, upon his oath, and when not upon oath, wilfully, falsely, and fraudulently, and with intent to cheat and defraud said defendant, stated and represented to said company, this defendant, and its agents, as follows, to wit: that the amount and value of the property aforesaid
20 belonging to them, the said plaintiffs, and so insured as aforesaid, and which was totally destroyed by said fire, was the sum of $70,604 85 at the time of said fire, when, in fact, the same was not more than $20,000; that the amount of their goods on hand Feb'y 28, 1865, as the primary basis of this claim against said defendant, was $47,561 87, when in truth the same was only $20,400 87 then and there; that two of the companies that had insurance upon said property at the time of said fire, the Phœnix & City Fire Insurance Companies, the former having had a policy of $5,000, and the latter a policy of $3,000 upon said property, then and there had paid the full amount of their policies to said plaintiffs, with a slight discount, when, in fact, both of said companies had

been allowed a discount of 46 per cent. upon the policies by said plaintiffs; and further, that said plaintiffs had represented no other or different basis of settlement to any of the companies interested in their loss by said fire than that stated to this company, the defendant as above named, when, in truth, said plaintiffs had, at that time, represented and given to the Phœnix City Fire, Ætna, and Underwriters' Insurance Companies, 7 of said companies, and each of them, a basis of settlement more than $40,000 below that represented and stated by plaintiffs to this defendant as aforesaid; and further, that said plaintiffs greatly overstated the amounts of goods purchased by them in the year 1866 and during the year preceding the fire; and further, the said plaintiff greatly understated the amount of their sales for the year 1866, and the year preceding the fire, and stated and represented to said defendant and said companies, that they had on hand in said building, at the time of the fire aforesaid, divers and sundry goods of which they had none on hand whatever then and there; and said plaintiffs have wilfully
21 and grossly misrepresented the facts respecting such fire and loss required by said policy to be stated by them. And the said defendant avers that said plaintiffs, and each of them, have and did wholly refused to answer questions relating to the said loss propounded to them by the agent of said company and this defendant, as required by the terms and conditions of said policy, as above stated, and about the last of March or first of April, 1867; and that said plaintiffs have so made such statements and representations and done such acts and things as aforesaid, knowing the same to be false and fraudulent, and with intent to defraud said defendant as aforesaid; and that thereby, and by reason thereof, all claim under said policy is forfeited and made null and void by the terms thereof; of all which facts above stated said plaintiffs had full notice and knowledge.

Said defendant thereupon denies that it is indebted to said plaintiffs, or either of them, in any sum or for any cause.

Wherefore said defendant demands judgment against said plaintiffs herein; that said plaintiffs take nothing by their action; that said policy be ordered to be given up and cancelled, and for the costs and disbursements of this action.

LAMPREYS & J. B. BRISBIN,
Defendant's Attorneys, St. Paul, Minn.

STATE OF MINNESOTA, *Ramsey County, ss:*

S. S. Eaton came before me personally, and, being duly sworn, doth say that he is an agent of and an officer of said defendant, which is a corporation, in the above-entitled action; that the foregoing answer is true of his own knowledge except as to the matters which are
22 therein stated on his information and belief, and, as to those matters, that he believes it to be true.

S. S. EATON.

Subscribed & sworn to before me on this 26 day of Dec., A. D. 1867.
[COM'S SEAL.] J. N. CARDOZO,
U. S. Commissioner, Dist. Minn.

And afterwards, to wit, at a general term of said court began and held at the city of Saint Paul, in said district, on the third Monday, being the 15th day of June, A. D. 1868, the following proceeding among others was had, to wit:

CHARLES WEIDE AND JOSEPH R. WEIDE
vs.
THE HOME INSURANCE COMPANY.

And now comes the defendant by its attorney, and moves the court that this cause be dismissed, because no new complaint has been filed in this court; which motion is denied.

And afterwards, to wit, at a general term of said court began and held at the city of St. Paul, in said district, on the third Monday, being the 21st day of June, A. D. 1869, on the second day of said term and the 22nd day of said June, the following proceeding among others was had, to wit:

CHARLES WEIDE ET AL.
vs.
THE HOME INSURANCE COMPANY.

23 This cause being reached, and it appearing that the same is properly on the calendar, on motion of Allis, Gilfillan & Williams, attorneys for the plaintiffs, ordered that this cause do stand for immediate trial; whereupon a jury was called.

And on the 3d day of said term, and the 23d day of said June, the following proceeding among others was had, viz:

CHARLES WEIDE ET AL.
vs.
THE HOME INSURANCE COMPANY.

This cause coming on to be further heard, and a jury being called, comes, viz: E. A. Boyd, Sam'l Durham, Geo. M. Clark, Solomon Stewart, D. E. Eyer, H. B. Knowles, J. C. Rhodes, C. V. Brown, J. S. Stewart, H. Ostrander, Geo. W. Newell, W'm Lamson, who being duly impannelled & sworn.

Case opened on part of the plaintiffs by Ja's Gilfillan, one of their attorneys.

Joseph R. Weide, sworn and examined as a witness for plaintiffs.
Charles Weide " " " "

And on the 4th day of said term and the 24th day of said June, the following proceeding among others was had, viz:

CHARLES WEIDE ET AL.
vs.
THE HOME INSURANCE COMPANY.

This cause now coming on for further hearing, and the jury heretofore impannelled in this cause being called came.

Louis Krieger is sworn and examined as a witness for the plaintiffs.

24

Jacob W. Petters is sworn and examined as a witness for the plaintiffs.
H. L. Williams " " " "
And here the plaintiffs rest their case.
The case is opened on the defendant by Morris Lamprey, its att'y.

J. M. McClung is sworn and examined as a witness on the part of the d'f't.
John Holland " " " " "
J. M. Bohrer " " " " "
Theodor Borup " " " " "
P. H. Kelley " " " " "
Bartlet Presley " " " " "
P. F. McQuillan " " " " "
Thomas Howard " " " " "
James K. Humphrey " " " " "
John Kleiner " " " " "
S. S. Eaton " " " " "
Uri Lamprey " " " " "
H. S. Durand " " " " "

And on the fifth day of said term, and the 25th day of said June, the following proceeding among others was had:

CHARLES WEIDE ET AL.
vs.
THE HOME INSURANCE COMPANY.

This cause coming on to be further heard, the jury, heretofore impannelled being called, came.

Examination of H. S. Durand, witness for defendant, resumed.

Geo. L. Chase is sworn and examined as a witness for the defendant.

And here the defendant rests its case.

25 Joseph R. Weide, recalled and re-examined for the plaintiffs.

And here the plaintiff rests.

Case summed up by Peabody, esq., for defendant; Lorenzo Allis, esq., sums up for plaintiffs.

Charge is given the jury by the court, and the jury retire, in charge of officers duly sworn and qualified to attend them, to consider of their verdict; and, on being returned into court, they say they find a verdict for the plaintiffs for the sum of four thousand five hundred and eighty-three dollars and thirty-five cents.

Whereupon the defendant gave notice of a motion for new trial; and it is by the court ordered, on motion of the defendant, that there be a stay of all proceedings in this action for twenty days.

And afterwards, to wit, on the 19th day of said term, and on the 15th day of July, 1869, the following proceeding among others was had, viz:

CHARLES WEIDE & JOSEPH R. WEIDE
vs.
THE HOME INSURANCE COMPANY.

And now the defendant, by its attorneys, having presented their two bills of exceptions, the same were allowed, and settled, and signed, and sealed by the judge of said court presiding; and thereupon the motion for a new trial, heretofore noticed in this cause, coming on to be heard, was argued by the counsel for the respective parties and submitted to the court; and it is by the court ordered that the same be, and it is hereby, denied.

And on the same day the said two bills of exceptions were duly filed in said court, and are in the words and figures following,
26 to wit:

UNITED STATES CIRCUIT COURT,
District of Minnesota, ss:

CHARLES WEIDE AND JOSEPH R. WEIDE
against
THE HOME INSURANCE COMPANY. } Bill of exceptions.

Be it remembered that at the general term of this court, on the 15th day of June, A. D. 1868, before the hon. the judges Samuel F. Miller, and R. R. Nelson, presiding, it appearing from the records of this court that this cause had been transferred to this court on the first day of the October term thereof for the year 1867, upon the petition of the defendant from the district court of the State of Minnesota, before issue was joined therein, and there having come into this court from said State court on the 14th day of October, 1867, a copy of the process and a copy of the complaint in this cause, and the defendant having entered its appearance and answer to the copy of complaint therein in this court, the defendant, by its counsel, on the 15th day of June, 1868, aforesaid, moved this court to dismiss this action upon the grounds that no original complaint or declaration had been made, or entitled, or filed in this court in this cause. And thereupon, after argument by counsel, such motion was overruled by the court, to which ruling of the court the defendant at the time duly excepted, and such exception was allowed and noted by the court.

27 And now the counsel for the defendant having duly excepted to the rulings of the court above stated, and prayed that his bill of exceptions be allowed, and the same having been examined and found to be true, at the request of the counsel for the defendant, the counsel for the plaintiff appearing and present, the foregoing bill of exceptions is hereby allowed, signed, and sealed.

R. R. NELSON. [SEAL.]

UNITED STATES CIRCUIT COURT,
District of Minnesota, ss:

CHARLES WEIDE AND JOSEPH R. WEIDE
against
THE HOME INSURANCE COMPANY. } Bill of exceptions.

Be it remembered that, on the trial of this cause, which came on for trial before this court at a general term thereof, on the 22nd day of June, A. D. 1869, the hon. the judge R. R. Nelson, presiding, a jury was duly impannelled and sworn to try this cause.

And thereupon, to maintain this cause on behalf of the plaintiffs, Joseph R. Weide, one of the plaintiffs, was duly sworn as a witness for the plaintiffs. The plaintiffs then offered and read in evidence the policy of insurance, with four renewals thereof, copies of which are hereto annexed, marked A; also their proofs of loss, copies of which are hereto annexed, marked B.

The said witness, Joseph R. Weide, then testified as follows:

28 "That the plaintiffs were in the grocery business at Saint Paul February 22nd, 1867, and from 1859 to that time; that their stock of goods was totally destroyed by fire, except about $22 worth, February 22, 1867; that they saved a ledger, two sale or day books, and an order-book, and no other books, the day-books covering a part of 1865 and all of 1866, down to the time of the fire. The ledger commenced October 1st, 1866,

and continued to the time of the fire, [the ledger commenced October 1st 1866, and continued to the time of the fire."] And, on being shown these day-books, the witness further testified: "I and my brother both kept them; entries in them were made daily, as sales and purchases were made; they were correctly made, so far as I made them. We posted from day-book to ledger every evening generally; sometimes laid over one day. I made most of the transfers to the ledger, perhaps not all. The transfers were correctly made. This ledger covers a period of four or five months preceding the fire." And on being shown the ledger which purported to contain, among other things, a merchandise account, the witness turned to the first page of such merchandise account, being page 63 of said ledger, and testified as follows: "The footing, the first item on each side of this merchandise account, was correctly transferred from a former ledger at the time it bears date, October 21st, 1866. The old ledger was burned up at the fire, and was kept in the same manner as this. We took an inventory once every year of our stock, on the last days of February; we took the last in February, 1866. These inventories were taken on foolscap paper with a pencil, and carried out and footed up, and, if found correct, were put in the inventory-book, in
29 ink, as soon as we are through. This was the mode of doing it in the years mentioned. We never transferred the footings up except to the fly-leaf of our ledger. We transferred to this fly-leaf the gross amount. The inventories were made correctly. This leaf is the fly-leaf I speak of, and is in my handwriting. The entries in it are correctly made from our invoice-book. They were made about the time I bought the new ledger. When we got the ledger we transferred some accounts from the old to the n' gradually; and the entries on this fly-leaf were made about the same time—about October, 1866—I should judge; can't say exactly. I wrote in ink the inventories partly, and my brother assisted me. I set down in the inventory what the goods were worth landed here. Our merchandise account commenced about the 1st of March, in each year. I should judge our stock at the time of the fire was worth $65,000; that is, the cost of the goods. This is the best estimate I can give."

And, on being cross-examined by the defendant, said witness testified: "We first took the inventory in February, 1866, on leaves of paper sewed together. We made the transfers to the inventory-book in ink as soon as the footings were made. We had done so for several years, and the inventory-book was not full. We did not transcribe from the inventory-book to any other book except the fly-leaf of the ledger. I cannot remember when we bought the new ledger. The old ledger was full. I copied some of the old accounts to the new ledger. Can't say why I transferred any old accounts to the new ledger. I can't account for transcribing footings to the fly-leaf. I did so because I had done so before. It was the fly-leaf of the new ledger. I
30 copied all of the fly-leaf from the invoice-book and old ledger. First inventory on the fly-leaf was for 1863. I do not know why it was not put on for 1861 and 1862. I can't remember how much there was written in the ledger when I wrote this on the fly-leaf. The only reason I know the books were burned is, I never have seen them. I took it for granted they were burned, and have never inquired for them. We had about $65,000 stock on hand at the time of the fire. I rely on the books for these figures; can't tell about it without them. I don't remember how much we sold during the winter preceding the fire; our purchases from March 1st, 1866, to the time of the fire, were $100,000; don't remember, except from the books. Our sales from March 1st, 1866,

to February 22nd, 1867, the time of the fire, were between $119,000 and $120,000. I rely on the books for these figures; can't tell anything about it without them."

The defendant's counsel then showed to the witness two papers, dated March 16th, 1867, one of them purporting to be a proposition to the Ætna Insurance Company, and the other to the Underwriters' Insurance Company; and the witness said: "The signatures to each of these papers is our signature." These two papers were then offered by defendant's counsel, and read in evidence, copies of which two papers are hereto annexed, marked C and D, respectively. Defendant's counsel then showed the witness two papers, dated May 25, 1867, one addressed to the Underwriters' Insurance Company, and the other to the Home Insurance Company; and the witness said: "The signatures to these papers are ours." These papers were then read in evidence, copies of which are hereto annexed, marked E and F, respectively.

The witness further stated: "We made the same proposition
31 to all the companies that we did to the Home and the Ætna. We did settle with the City Fire and Phœnix on basis of $29,261 30, at 53 per cent. We compromised with City Fire and Phœnix on that basis."

And thereupon the same testimony, in substance, as to the books and as to their correctness, so far as they were kept by him, was given by Charles Weide, one of the plaintiffs, who was sworn for the plaintiffs, and testified as to the value of the stock at the time of the fire. And thereupon further testimony was given, tending to show that the fire occurred in the night, and [and] when first discovered had proceeded so far that it was impossible to get access to the part of the building where plaintiffs kept their books and papers.

And thereupon the plaintiffs offered in evidence the two day-books above mentioned. The defendant objected to the same, and each and every item in the same, upon the grounds that no foundation was laid for introducing the same, because the same were statements of parties in their own behalf, and were incompetent and immaterial; but the court overruled the objections and received the evidence. The defendant then duly excepted to the ruling of the court, and by request of the defendant its exception was allowed and noted by the court.

The plaintiffs then offered in evidence the said ledger and the said fly-leaf of the ledger, of which fly-leaf a true copy is hereto attached, marked G. The defendant then objected to the said ledger, and every item thereof, and especially to the first item of the merchandise account,
on page 63 thereof, of which a true copy is hereto attached,
32 marked H, and also to the said fly-leaf, and each and every entry thereon, upon the ground that there was no foundation laid for introducing the [the] same, or any part of the same, because the same, and every part of the same, were declarations of a party in his own favor, and incompetent and immaterial. The court overruled each of the objections, and received the same in evidence. The defendant then duly excepted to such rulings severally, and by request of the defendant its exceptions were duly allowed and noted by the court at the time.

Louis Krieger and J. W. Petters were each sworn for the plaintiffs, and each gave testimony as to the plaintiffs' goods in the store at the time of the fire, and the witness Krieger as to the value thereof; and Henry L. Williams, sworn as a witness for the plaintiffs, testified to the amounts of sales and purchases as appearing from the books.

The plaintiffs here rested their case.

And thereupon the defendant, to maintain and prove its defence in

this cause, called various witnesses, who were duly sworn, and their testimony received in evidence for the defence. And other testimony on the part of the defendant, in writing, was offered and received in evidence. And such testimony and evidence tended to show that the day-books and ledger above mentioned, received in evidence on behalf of the plaintiffs, and the fly-leaf of the ledger above mentioned, were unreliable, and afforded no data from which the value of the plaintiffs' goods on hand at the date of the fire could be ascertained or the extent
33 of their loss determined, and which testimony and evidence tended to show that the plaintiffs, in their proofs to the defendants, and in their statements to the defendants, when upon oath, and when not upon oath, had greatly overstated the amount of their loss by such fire, and tended to prove the defences set up by the defendant in its answer.

And, among other witnesses, the defendants called J. M. Bohrer, who was duly sworn for defendant, and testified, among other things, as follows: "I was in the grocery business here from October, 1865, to September, 1867. I know the Weides and their place of business." And the defendant offered to show by this witness, and other witnesses, grocery merchants for several years last past in the city of St. Paul, that grocery merchants in St. Paul, for the last six years, have not carried or had on hand more than one-fifth of their annual aggregate sales at any one time, on the average. And the plaintiffs' counsel then objected to the same, on the ground that the same was incompetent and immetrial. The court sustained the objection, overruled the offer, and excluded the testimony. To which ruling of the court the defendant then duly excepted, and by request of the defendant its exception was then duly noted by the court.

The defendant then offered to show by the same witnesses that such grocery merchants in this city were not carrying, and did not have on hand, on the 22nd of February, 1867, more than one-fifth of their annual aggregate sales, and that their annual sales were the same as, or larger than, the plaintiffs' then and there, and that they dealt in the same kinds of goods; but the plaintiffs then objected to the same, on the
34 grounds that it was incompetent and immaterial. And the court sustained the objection, overruled the offer, and excluded the testimony; to which ruling of the court the defendant then duly excepted, and by request of the defendant such exception was then duly allowed and noted by the court.

The defendant then asked said witness the following question: "Supposing that plaintiffs' sales were $120,000 for the year preceeding the fire as grocery merchants, what average amount did they carry or have on hand during such year, according to the general course of business?" The plaintiff objected to the same, on the ground that the same was incompetent and immaterial. The court sustained the objection, and refused to allow the question; to which ruling of the court the defendant then excepted, and such exception was duly allowed and noted by the court.

The defendant then asked the said witness the following question: "Supposing the plaintiffs' sales were $120,000 during the year preceeding the fire as grocery merchants, according to the general course of business, what amount did they carry or have on hand February 22, 1867, the time of the fire?" The plaintiffs' counsel objected to the question, on the ground that the same was incompetent and immaterial. The court then sustained the objection, and overruled the question; to which ruling of the court the defendant then duly excepted, and the defendant's exceptions were then duly allowed and noted by the court.

The defendant then asked said witness the following question:
35 "Supposing that the plaintiffs' sales were $120,000 during the year preceeding the fire as grocery merchants, what amount of merchandise should they have carried or had on hand, according to the general course of the business, at the time of the fire, February 22, 1867?" The plaintiffs then objected to the question, on the ground that the same was incompetent and immaterial. The court sustained plaintiffs' objections, and overruled the question; to which ruling of the court the defendant then excepted, and the defendant's exception was then duly allowed and noted by the court.

The defendant then called, as a witness for the defence, James H. Humphrey, who was duly sworn as such witness, and testified as follows: "I was United States assistant assessor in 1865 and 1866, in this district. Each of the Weides made income returns to me for each of these years, under oath. I have these original income returns for both years." The defendant then offered these original income returns, and each of them, for each year, in evidence. The plaintiffs objected to the same, and each of the same, as incompetent and immaterial. The court sustained the plaintiffs' objection, and excluded the evidence for each year; to which ruling, as to each year's return, the defendant then duly excepted, and the defendant's exception was duly allowed and noted by the court.

The defendant's counsel then offered, and read in evidence, the affidavit of Charles Weide, hereinafter referred to, and of which a copy is hereto annexed, marked I.

36 And the defendant called, as a witness for the defence, H. S. Durand, who was duly sworn as such witness, and testified as follows: "I have been for several years an adjuster of losses for insurance companies. I arrived here about the 25th of March, 1867; came to settle this loss for this company and several others. I represented the Home Insurance Company, Underwriters' Insurance Company of North America, and the International. I saw the plaintiffs, and asked them for proofs for all these companies; they said they would have them ready the next morning. I told them the policy gave us the right to ask of them a detailed statement. Mr. Chase, the president of the Hartford Insurance Company, afterwards came, and we then took the affidavit of Charles Weide together; Mr. Chase wrote it. I asked most of the questions, and it was sworn to by Charles Weide, before Mr. Eaton, as notary public, April 3d, 1867. (A copy of this affidavit is hereto annexed, marked I, as above stated.) I showed the Weides the stipulation to the City Fire Insurance Company, and they said they had made such to the City Fire, Phœnix, and Underwriters'." It was further proved that in the preliminary proofs or statements of loss furnished by the plaintiffs to each of the companies having insurance on the property the same amount was stated and claimed as the amount of the loss, and that plaintiffs claimed to be entitled to demand of each of said companies the whole amount of its policy.

And thereupon the defendant's counsel requested the court to give to the jury the following several instructions respectively, to wit:

37 "1st. If the jury find from the evidence that the plaintiff Charles Weide, in his affidavit of April 3d, 1867, refused to answer questions therein propounded to him in writing by the defendant's agent, touching his knowledge of anything relating to the loss or damage of the plaintiffs by the fire in question, or their claim thereupon, then the jury will find a verdict for the defendant. And the court gave such in-

struction to the jury, with this qualification: that such questions must be material to the loss and the plaintiffs' claim therefor; to which qualification thereof and charge of the court as given, the defendant's counsel then duly excepted, and by request of defendant such exception was then duly allowed and noted by the court.

"2nd. If the jury find from the evidence that in the affidavit of April 3d, 1867, the agent of the defendant propounded the following question to Charles Weide, in writing, to wit: 'Have you settled, or agreed to settle, or proposed to settle, with any of the other companies interested in your loss on any other basis than that furnished The Hartford Insurance Company?' and if the jury further find from the evidence that at the time of propounding such question pl'ffs had furnished to The Hartford Insurance Company a basis of settlement, the contents of which were known to the defendant's agent, Durand, and if the jury find from the evidence that Charles Weide refused to answer such question, then the verdict of the jury will be for the defendant. But the court declined so to instruct the jury, but did then instruct the jury as follows:

38 "I charge you that there is no agreement in a policy of insurance that the insured will not settle or compromise, and so far as any propositions for settlement are in evidence here they are mere compromises, and do not establish any fact as to a basis of settlement or any independent fact; but if the jury believe that the question propounded required an answer upon a matter material to the loss then they were entitled to it, and a refusal bars a recovery." To which refusal of the court to instruct the jury, and to such instruction as then given by the court to the jury, the defendant's counsel then duly excepted in open court, and such exception thereto, by request of the defendant's counsel, was then duly allowed and noted by the court.

"3d. If the jury are satisfied from the evidence that question No. 3, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent, and if the said Charles Weide refused to answer, and did not answer the same, then plaintiffs cannot recover." And the court declined so to instruct the jury, but did instruct the jury as follows: "If you think the question was material, then the defendant was entitled to an answer." To which refusal to charge and instruction to the jury as given by the court, the defendant's counsel then duly excepted in open court, and such exception of the defendant was then duly allowed and noted by the court.

39 "4th. If the jury are satisfied from the evidence that question No. 4, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent; and if the said Charles Weide refused to answer, and did not answer the same, the plaintiffs cannot recover. But the court declined so to instruct the jury; to which refusal of the court to instruct the jury the defendant's counsel then duly excepted in open court, and such exception of the defendant was then duly allowed and noted by the court.

"5th. If the jury are satisfied from the evidence that question No. 5, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent; and if the said Charles Weide refused to answer and did not answer the same, the plaintiffs cannot recover. But the court declined so to instruct the jury; to which ruling and refusal of the court to charge the jury the defendant's counsel then duly excepted in open court, and such exception of defendant was then duly allowed and noted by the court.

"6th. If the jury are satisfied from the evidence that question No. 8, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent; and if the said Charles Weide refused to answer and did not answer the same, the plaintiffs cannot recover. But the
40 court declined so to instruct the jury; to which ruling of the court and refusal to instruct the jury the defendant's counsel then duly excepted in open court, and such exception of defendant was then duly allowed and noted by the court.

"7th. If the jury find from the evidence that the plaintiffs, or either of them, have wilfully sworn falsely upon a material point at this trial the jury will be justified in disregarding all of his or their testimony that is not corroborated by some other testimony."

And the court so charged the jury.

"8th. If the jury shall find from the evidence that the plaintiffs have before the commencement of this suit made any attempt to defraud the defendant in any matter relating to the fire or the amount or value of the goods destroyed thereby, then the jury will find a verdict for the defendant."

And the court so charged the jury.

"9th. If the jury shall find from the evidence that the plaintiffs in their proof of loss rendered to the defendant, or in the affidavit of Joseph R. Weide or of Charles Weide made to the defendant's agent, wilfully and falsely stated the value of the goods destroyed by fire to be larger than their actual value for the purpose of inducing the defendant to pay a larger sum than they were liable for under their policy, then the jury will find a verdict for the defendant."

And the court so charged the jury.

41 "10th. If the jury find from the evidence that the plaintiffs were requested before the commencement of the suit by the defendant's agent to produce certified copies of invoices of the property destroyed, the original of which invoices may have been lost or destroyed, and if the jury further find from the evidence that the plaintiffs might have produced such copies, or some of them, but refused or declined so to do, then the jury will find a verdict for the defendant."

And the court so charged the jury.

"11th. If the jury find from the evidence that Joseph R. Weide, in his affidavit to defendant's agent, swore that they had received their money of the Phœnix and City Fire Insurance companies, each paying them the full amount of their policies, less a slight discount, and if the jury find from the evidence that these companies had settled by paying only 54 per cent. on their policies, and if the jury find from the evidence that Joseph Weide made this statement in order to induce the defendant to pay plaintiffs a larger sum than they were properly liable for under the policy, then the jury will find a verdict for the defendant."

And the court so charged the jury.

"12th. If the jury find from the evidence that the whole amount of insurance on the plaintiffs' goods was $54,600, and that the actual loss to the plaintiffs on the goods was less than that sum the plaintiffs cannot recover in this case any greater proportion of the loss than
42 $4,000 bears to $54,600."

And the court so charged the jury.

"13th. If the jury should find a verdict for the plaintiffs for any amount they will also state in their verdict what they find was the value of the goods destroyed by the fire."

And the court so charged the jury.

struction to the jury, with this qualification: that such questions must be material to the loss and the plaintiffs' claim therefor; to which qualification thereof and charge of the court as given, the defendant's counsel then duly excepted, and by request of defendant such exception was then duly allowed and noted by the court.

"2nd. If the jury find from the evidence that in the affidavit of April 3d, 1867, the agent of the defendant propounded the following question to Charles Weide, in writing, to wit: 'Have you settled, or agreed to settle, or proposed to settle, with any of the other companies interested in your loss on any other basis than that furnished The Hartford Insurance Company?' and if the jury further find from the evidence that at the time of propounding such question pl'ffs had furnished to The Hartford Insurance Company a basis of settlement, the contents of which were known to the defendant's agent, Durand, and if the jury find from the evidence that Charles Weide refused to answer such question, then the verdict of the jury will be for the defendant. But the court declined so to instruct the jury, but did then instruct the jury as follows:

38 "I charge you that there is no agreement in a policy of insurance that the insured will not settle or compromise, and so far as any propositions for settlement are in evidence here they are mere compromises, and do not establish any fact as to a basis of settlement or any independent fact; but if the jury believe that the question propounded required an answer upon a matter material to the loss then they were entitled to it, and a refusal bars a recovery." To which refusal of the court to instruct the jury, and to such instruction as then given by the court to the jury, the defendant's counsel then duly excepted in open court, and such exception thereto, by request of the defendant's counsel, was then duly allowed and noted by the court.

"3d. If the jury are satisfied from the evidence that question No. 3, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent, and if the said Charles Weide refused to answer, and did not answer the same, then plaintiffs cannot recover." And the court declined so to instruct the jury, but did instruct the jury as follows: "If you think the question was material, then the defendant was entitled to an answer." To which refusal to charge and instruction to the jury as given by the court, the defendant's counsel then duly excepted in open court, and such exception of the defendant was then duly allowed and noted by the court.

39 "4th. If the jury are satisfied from the evidence that question No. 4, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent; and if the said Charles Weide refused to answer, and did not answer the same, the plaintiffs cannot recover. But the court declined so to instruct the jury; to which refusal of the court to instruct the jury the defendant's counsel then duly excepted in open court, and such exception of the defendant was then duly allowed and noted by the court.

"5th. If the jury are satisfied from the evidence that question No. 5, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent; and if the said Charles Weide refused to answer and did not answer the same, the plaintiffs cannot recover. But the court declined so to instruct the jury; to which ruling and refusal of the court to charge the jury the defendant's counsel then duly excepted in open court, and such exception of defendant was then duly allowed and noted by the court.

"6th. If the jury are satisfied from the evidence that question No. 8, in the affidavit of Charles Weide, in evidence, was propounded to the said Charles Weide by the agent of the company, then such question was material and competent; and if the said Charles Weide refused to answer and did not answer the same, the plaintiffs cannot recover. But the
40 court declined so to instruct the jury; to which ruling of the court and refusal to instruct the jury the defendant's counsel then duly excepted in open court, and such exception of defendant was then duly allowed and noted by the court.

"7th. If the jury find from the evidence that the plaintiffs, or either of them, have wilfully sworn falsely upon a material point at this trial the jury will be justified in disregarding all of his or their testimony that is not corroborated by some other testimony."

And the court so charged the jury.

"8th. If the jury shall find from the evidence that the plaintiffs have before the commencement of this suit made any attempt to defraud the defendant in any matter relating to the fire or the amount or value of the goods destroyed thereby, then the jury will find a verdict for the defendant."

And the court so charged the jury.

"9th. If the jury shall find from the evidence that the plaintiffs in their proof of loss rendered to the defendant, or in the affidavit of Joseph R. Weide or of Charles Weide made to the defendant's agent, wilfully and falsely stated the value of the goods destroyed by fire to be larger than their actual value for the purpose of inducing the defendant to pay a larger sum than they were liable for under their policy, then the jury will find a verdict for the defendant."

And the court so charged the jury.

41 "10th. If the jury find from the evidence that the plaintiffs were requested before the commencement of the suit by the defendant's agent to produce certified copies of invoices of the property destroyed, the original of which invoices may have been lost or destroyed, and if the jury further find from the evidence that the plaintiffs might have produced such copies, or some of them, but refused or declined so to do, then the jury will find a verdict for the defendant."

And the court so charged the jury.

"11th. If the jury find from the evidence that Joseph R. Weide, in his affidavit to defendant's agent, swore that they had received their money of the Phœnix and City Fire Insurance companies, each paying them the full amount of their policies, less a slight discount, and if the jury find from the evidence that these companies had settled by paying only 54 per cent. on their policies, and if the jury find from the evidence that Joseph Weide made this statement in order to induce the defendant to pay plaintiffs a larger sum than they were properly liable for under the policy, then the jury will find a verdict for the defendant."

And the court so charged the jury.

"12th. If the jury find from the evidence that the whole amount of insurance on the plaintiffs' goods was $54,600, and that the actual loss to the plaintiffs on the goods was less than that sum the plaintiffs cannot recover in this case any greater proportion of the loss than
42 $4,000 bears to $54,600."

And the court so charged the jury.

"13th. If the jury should find a verdict for the plaintiffs for any amount they will also state in their verdict what they find was the value of the goods destroyed by the fire."

And the court so charged the jury.

"14. If the jury find from the evidence that the plaintiffs, or either of them, in the proofs of loss submitted by them to the defendant swore that their loss was $70,654 85; and if the jury shall find from the evidence that the actual loss of the plaintiffs did not exceed ½ or ⅓ of that amount, then the jury will find a verdict for the defendant, unless they are satisfied from the evidence that the discrepancy between the amount so sworn to and the amount of the actual loss was occasioned by mistake or inadvertence."

And the court so charged the jury.

And thereupon the court, in its charge to the jury, among other things, by request of plaintiffs' counsel, instructed and charged the jury on such trial in the following words respectively, to wit:

"1. That under the conditions of the policy the plaintiffs were bound to answer only such questions as tended to inform the company as to the amount and circumstances of the loss, as such facts as were proper to inform the company as to the correctness of the plaintiffs claim."

43 And the defendant's counsel then objected to such charge and request to charge, and every part of the same; but the court overruled the objection, and by request of the defendant the exception of the defendant then duly taken to such charge and ruling was duly allowed and noted at the time.

"2. If the jury should find that either of the plaintiffs at first refused to answer questions which they were bound to answer under the conditions of the policy, and such plaintiff afterwards and before the investigation which the company's agents were making into plaintiffs' claim were concluded, retracted such refusal and answered such questions at the time of the examination and gave the information called for, then the refusal is no bar to plaintiffs' recovery. And the defendant's counsel then objected to such charge and request to charge, and every part of the same; but the court overruled the objection, and by the request of the defendant the exception of the defendant then duly taken to such ruling and charge was duly allowed and noted by the court at the time.

"3d. That to find a fraud or attempt at fraud, within the meaning of the terms of the policy, the jury must find not only that the plaintiffs overstated or misstated facts in respect to their loss or claim, but that such overstatement or misstatement was made wilfully, knowingly, and with intent to defraud the company. And the defendants then duly objected to such charge and requests to charge, and every part of the same; but the court overruled the objection, and by request of the

44 defendant the exception of the defendant then duly taken to such charge and ruling was duly allowed and noted by the court at the time.

"4th. If the jury find that the whole amount of the loss by the fire to the property insured was equal to or greater than the whole amount of insurance on such property, then plaintiffs are entitled to a verdict for the whole amount claimed unless the jury find that the plaintiffs attempted to commit fraud on the company or refused to answer proper questions put to them by the company or its agent, and did not retract such refusal and answer such questions in time. And the defendant's counsel then duly objected to such charge and request to charge, and every part of the same; but the court overruled the objection, and by request of the defendant the exception of the defendant then duly taken to such charge and ruling was duly allowed and noted by the court at the time.

And the court also, in its charge to the jury, said that if the plaintiffs, when they made out their preliminary proofs, believed that the state-

ments of loss were true, and intended to act in good faith, then there was no fraudulent over-estimate of the loss.

And now the counsel for the defendant upon the trial of said cause having duly excepted and prayed that this his bill of exceptions should be duly signed and allowed, and the same having been examined and found to be true, the foregoing bill of exceptions, at the request of the said counsel for the defendant, is hereby allowed, signed, & sealed.

RENSSELAER R. NELSON. [SEAL.]

45 (A.)

Stock company.—Cash capital, $2,000,000.

No. 372. *Home Insurance Company of the City of New York.* $4,000.

By this policy of insurance, The Home Insurance Company, in consideration of forty dollars to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure C. Weide & Bro., St. Paul, Minnesota, against loss or damage by fire to the amount of four thousand dollars on their stock of groceries, nails, hollow-ware, and other merchandise contained in the three-story brick store situated on the southerly side of Third street, between Robert and Mendota streets, St. Paul proper.

For a more particular description of said premises reference is had to survey No. 377, filed in this office, which is hereby made a part of this policy.

Insurance acknowledged in—

Ætna Ins. Co., Hartford	$4,000
Phœnix, Hartford	4,000
City Fire	3,000
Hartford Ins. Co	4,000
Ætna Ins. Co	6,000
Feb. 1:	
Ætna Ins. Co	5,000
Hartford	5,000
International	5,000

Jan'y 30, '66, other insurance permitted without notice until required.

S. S. EATON, *Ag't.*

And the Home Insurance Company above named, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their executors, administrators, or assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, during one year, to wit, from the twenty-fourth day of Oct'r, one thousand eight hundred and sixty-three, (at twelve o'clock at noon,) until the twenty-fourth day of Oct., one thousand eight hundred and sixty-four, (at twelve o'clock at noon;) the said loss or damage to be estimated according to the actual cash value of the said property at the time the same shall happen; and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions annexed to this policy, unless the property be replaced by similar property of equal value and goodness, or the company have given notice of their intention to rebuild or repair the damaged premises. Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen by means of any invasion, insurrection,

riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire. And provided further, that if any other insurance has been or shall hereafter be made upon the said property, and not consented to by this company in writing hereon, or if the said property shall be sold or conveyed, or the interest of the parties therein changed, or if this policy shall be assigned without the consent of the company obtained in writing hereon, or if the insured shall make any attempt to defraud the company, then and in every such case this policy shall be null and void. In case of loss the insured shall not be entitled to demand or recover on this policy any greater proportion of the loss or damage sustained to the subject insured than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above-mentioned premises at any time during the period for which this policy would otherwise continue in force, shall be used for the purpose of carrying on therein any trade or vocation, and for storing and keeping therein any articles, goods, or merchandise denominated hazardous, or extra hazardous, or specially hazardous, in the second class of the classes of hazards annexed to this policy, except as herein specially provided for, or hereafter agreed to by this corporation, in writing, upon this policy, from thenceforth, so long as the same shall be so used this policy shall be of no force or effect. And it is moreover agreed and declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to property, nor to bonds, bills, notes, or other evidences of debt; nor to money or bullion, and that casts, curiosities, engravings, jewelry, jewels, medals, models, musical and scientific instruments, (piano-fortes in dwelling-houses excepted,) paintings, patterns, plate, precious stones, printed music, prints, sculptures, statuary, and watches are not deemed to be included in any insurance unless particularly mentioned in writing in the policy, with specific amounts thereon.

Whenever gunpowder, phosphorus, saltpetre, or any other article subject to legal restriction shall be kept in said premises in quantities greater than the law allows, or in a manner different from that prescribed by law, unless said use or keeping is specially provided for herein, this policy shall be null and void.

☞ If any property covered by this insurance be damaged by lightning, or the bursting of a boiler, or by explosion from any cause, this company shall not be liable therefor, unless fire ensue, and then for the loss by fire only.

☞ This policy is made and accepted in reference to the terms and conditions herein contained and hereto annexed, which are hereby declared to be a part of this contract, and are to be used and resorted to in order to determine the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

In witness whereof the Home Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of New York. But this policy shall not be valid unless countersigned by Borup & Oakes, agent of the said Home Insurance Company at St. Paul, Minn.

A. F. WILMARTH, *President.*

J. MILTON SMITH, *Secretary.*

Countersigned at St. Paul this 24th day of Oct'r, 1862.

BORUP & OAKES, *Agents.*

[Twenty-five-cent internal revenue stamp affixed and cancelled.]

Read the conditions, &c., on inside pages.

46 The Home Insurance Company hereby consent that the interest of in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to

186

Agent.

For value received, hereby transfer, assign, and set over unto and assigns, all title and interest in this policy, and all advantage to be derived therefrom, subject to all the terms and conditions therein mentioned and referred to.

Witness hands and seals this day of 186

Sealed and delivered in presence of—

47 *Classes of hazards.*

FIRST CLASS.

Not hazardous.—Staple foreign dry goods in packages, and staple domestic dry goods; also, household furniture in dwelling-houses may be insured at 5 cents per $100, in addition to the rate of the building.

Hazardous, No. 1.—The following articles of merchandise are charged 10 cents per $100 more than the building, but do not increase the rate of the building, nor its other contents: stocks of general dry goods, including cotton batts and wadding; of embroideries and laces; of tailors' goods and ready-made clothing; also, agricultural implements; boots and shoes; coffee; flour; furs or peltries in packages; glass (window or plate, or looking-glasses) in boxes; hatters' furs; hardware and cutlery; hides and leather; hops in bales; indigo; iron ware; metals, (in bars, rods, pigs, or sheets;) paints; paper hangings; paper in reams; pot, pearl, and soda ashes; rice; salt; spices; straw braid and straw hats, in packages as imported; teas; threshed grain; tin, copper, and sheet-iron ware; tobacco; snuff; whalebone; wine in casks and in glass, in packages.

Extra hazardous, No. 1.—The following articles of merchandise are charged 20 cents per $100 more than the building, but do not increase the rate of the building, nor its other contents: artificial flowers and feathers; brushmakers' stock; gas fixtures; colormen's stock; china, glass, or earthen ware, or window or plate glass, or looking-glasses, unpacked; fishing tackle; furs unpacked; liquor and wines in glass unpacked; musical instruments and printed music; percussion caps; pictures and prints; precious stones; silver plate and plated ware; straw goods; India-rubber hard goods; also, stocks of books; of cabinet ware; of confectionery; of daguerreotype materials; of carriages; of feathers; of jewelry; of watches; of watchmakers' tools; of lamps; of brushes; of millinery; of military goods; of needles; of optical and mathematical instruments; of paper boxes and band boxes; of perfumery; of pocket-books; of segars in segar stores; of stationery; of toys; and of fancy goods.

SECOND CLASS.

Hazardous, No. 2.—The following trades, occupations, and merchandise add to the rate of the building and its contents 10 cents per $100: belting and car springs of India rubber or gutta percha; card-printing;

china or earthern ware, or glass ware in boxes, crates, or casks; fire-crackers in packages; flax, hemp, Manilla, and sisal grass and tow, in bales; flocks; grocers' stocks; gum shellac; gutta percha and India rubber, manufactured; hat ironing; oil, (fish and vegetable;) provisions; sail making; spirituous liquors; sugars; sulphur; tallow; wine-dealers' stock, (not including wine in glass unpacked;) wool.

Extra hazardous, No. 2.—The following articles of merchandise add to the rate of the building and its contents 20 cents per $100: alcohol; apothecaries' stock, (retail only;) basket-sellers' stock; china or earthen or glass ware, or looking-glasses, with privilege of packing or unpacking; cotton in bales; cotton-brokers' samples; drugs, (importers' stocks of, without inflammable acids or phosphorus;) eating-houses; essential oils; gum copal; India-rubber and gutta-percha goods; hay and straw pressed in bundles; Manilla and sisal grass unpacked; matches, stocks of, on sale; oakum in bales; oiled clothing; painters' stock; pitch; perfumers' stock; porter-houses; rags in packages; rosin and rosin oil; ship chandlery; turpentine; tar; spirits of turpentine; varnish; wood and willow ware.

Extra hazardous, No. 3.—The following trades and occupations add to the rate of the building and its contents 20 cents per $100: bakeries, with ovens outside the building and using coal; basket-bleaching; basket making; blacksmiths' shops; box-repairing workshops; brass turning or working; carving; charcoal making; copper-plate printing; daguerreotyping; electro-plating; fringe making by hand-power; gas fitting; gilding; gold-pen making; gun repairing; hat bleaching; hat finishing; jewelry manufacturing; lamp manufacturing; liquor bottling establishments; lithographing; map mounting and varnishing; morocco manufacturing; plumbing and pewtering; printing of newspapers and engravings, by hand-power only; pocket-book making; provision warehouses with brick smoke-houses attached; segar making; silversmithing; tin or sheet iron or copper working; turning in wood; umbrella manufacturing; upholstering; also private stables.

Specially hazardous.—Acids, (nitric, sulphuric, muriatic, and other acids causing ignition;) band-box and paper-box making; bakeries; bark mills; bellows making; bleaching works; blind-makers' shops; blacksmithing; block and pump making; bookbinderies; boat-builders' shops; brass founderies; breweries; brick yards with kilns; brimstone works; brush manufactories; burning-fluid; cabinet-makers' shops; chair-makers' shops; carpenters' shops; candle manufactories; camphene on sale; coppersmiths' shops with forges; coffee and spice mills; chemical laboratories; coach-makers' shops; comb manufactories; confectionery manufactories; coopers' shops; corn kilns; cotton mills; cotton presses; cotton unpacked; distilleries and rectifying establishments; dyeing establishments; druggists' stocks, (wholesale;) drug and spice mills; ether; fur-dressing establishments; fire works; fire-work manufactories; flax mills; floor-cloth manufactories; fringe manufactories; fulling mills; flax unpacked; gas manufactories; glass manufactories; grate manufactories; grist or flouring mills; gun manufactories; gunpowder; hat manufactories; hay unpacked; houses building or repairing; hemp unpacked; India-rubber and gutta-percha manufactories; hay presses; hemp manufactories; hotels; ink manufactories; iron foundries; ivory-black and lamp-black manufactories; lamp manufacturing; lime yards and sheds; lime unslacked; livery stables; lumber yards; looking-glass and picture-frame manufactories; machine shops; mahogany yards; malt houses; matches manufactories; metal mills; musical-instrument manufactories; mungo; oiled-clothing manu-

factories; oil mills and manufactories; omnibus stables; plating; plated-ware manufacturing; packing buildings and yards; paper mills; paper-hanging manufactories; percussion-cap manufactories; perfumery manufactories; planing or grooving or moulding mills; powder mills; printing of books and job printing; phosphorus; pork houses; print works; rolling mills; rope and cordage manufactories; rag and junk shop stock; safe (iron) manufactories; stove manufactories; saltpetre; ship building or repairing; sash-makers' shops; saw-mills; shoddy; smoke houses; soap manufactories; silversmiths' manufactories; snuff mills; spirit-gas manufactories and spirit gas on sale; stave yards; steamboats; steam engines in use; sugar refiners; tobacco manufactories; type and stereotype foundries; tallow-melting establishments; tanneries; tar-boiling houses; taverns; theatres and other places of public exhibition; timber yards; tow unpacked; turpentine distilleries; varnish manufactories; woolen mills; wool-waste; wheelwrights' shops; and generally all workshops, mills, and manufacturing establishments, and all trades and occupations not above enumerated as hazardous or extra hazardous.

The use of camphene, phosgene, spirit gas, or burning-fluid, or any other inflammable liquid, as a light, in stores, warehouses, shops or manufactories, subjects the property insured to an additional charge, and permission for such use must be endorsed in writing on the policy.

Plate-glass doors and windows, when the plates are of the dimensions of three square feet or more, are subject to an extra premium, and must be separately and specifically insured.

Fences, privies, and other yard fixtures, also store furniture and fixtures, must be separately and specifically insured.

Conditions of insurance.

1. Applications for insurance on property must be in writing, and must specify the construction and materials of the building to be insured, or containing the property to be insured; by whom occupied, whether as a private dwelling, or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; and whether any manufacturing is carried on within or about it; and in relation to the insurance of goods and merchandise, the application must state whether or not they are of the description denominated hazardous, extra hazardous, or specially hazardous, and such survey and description shall be taken and deemed to be a part and portion of the policy issued thereon, and a warrantry on the part of the insured.

2. If any person effecting insurance in this company shall make any misrepresentation or concealment touching the risk to be assumed, or if, during the existence of this policy, or any renewal thereof, the risk shall be increased by any means within the control of the insured; or by the occupation of the premises for more hazardous purposes than are permitted by this policy; or if the assured, at or before the taking of any renewal, shall fail to notify the company of any increase of the hazard, whether within or without the premises, and have the same endorsed hereon, this policy shall be void. Every renewal shall be deemed to be made upon the faith of the representation on which the original policy was granted, unless superseded by a new description of the risk.

3. This insurance may be terminated at any time, at the request of the insured, in which case the company may retain the customary short rates for the time the policy has been in force. The insurance may also be at any time terminated at the option of the company, on giving no-

tice to that effect and refunding a ratable proportion of the premium for the unexpired term of the policy.

4. If the property to be insured be held in trust or on commission, or be a leasehold, or other interest not absolute, it must be so represented to the company, and expressed in the policy in writing, otherwise the insurance as to such property shall be void; and, in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, with their respective interests therein.

Goods held on storage must be separately and specifically insured.

5. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium.

6. If, at the happening of any fire, the insured shall have insurance under a floating policy or policies, not specific, but covering goods generally, in various places not designated, and yet within limits which include the premises or property herein insured, such policy, as between the insured and this company, shall be considered as covering any excess of sound value of the subject insured beyond the amount covered by the specific insurances thereon; and to determine the amount for which this company is liable in case of loss, such floating policy shall be considered an insurance on the property to the extent of such excess.

7. In case of claim for loss or damage on a policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the insured in conformity with the conditions of this policy, in like manner as if no assignment had been made; otherwise this policy shall be void and of no force or effect whatever, and all liability on the part of this company shall cease.

8. In case of fire, or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property; and if they shall fail to do so, this company shall not be held liable to make good the loss and damage sustained in consequence of such neglect. And it is mutually understood that there can be no abandonment to the insurers of the subject insured.

9. Persons sustaining loss or damage by fire shall forthwith give notice thereof in writing to the company, or its agent, and as soon after as possible they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just; showing also the ownership of the property insured; what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured, or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, so far as they know or believe. They shall also produce a certificate, under the hand and seal of a magistrate, notary public, or commissioner of deeds, most contiguous to the place of the fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers, stating that he has examined the circumstances attending the fire, loss, or damage alleged, and that he is acquainted with the character and circumstances of the insured or claimant; and that he verily believes that he, she, or they have, by misfortune and without fraud or evil practice, sustained loss and damage on the subject insured, to the amount which such magistrate, notary public, or commissioner of deeds shall certify.

When merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged; and shall cause a list or inventory to be made and furnished to the company, of the whole, naming the quantity and cost of each. The amount of sound value and of damage may then be ascertained by the examination and appraisal of each article, by disinterested appraisers, mutually agreed upon, one-half of the appraisers' fees to be paid by the insurers; and the insured shall, if required, submit to an examination under oath by the agent or attorney of the company, and answer all questions touching his, her, or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and whenever required, in writing, the insured, or person claiming, shall produce and exhibit his books of account and other vouchers to the insurers or their agent, at the office of this company, in support of his claim, and permit extracts and copies thereof to be made; and shall also produce certified copies of any bills or invoices of property destroyed or damaged, the originals of which may have been lost, mislaid, or destroyed; and shall also exhibit to any person named by the company, and shall permit to be examined by them, any property damaged on which any loss is claimed, or any property saved which was insured by this policy; and until such proofs, declarations, and certificates are produced, and such appraisals and examination of property permitted by the claimant, the loss shall not be payable.

All fraud, or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claim on this company under this policy.

10. In case of any loss on or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged with others of the same kind and quality, or to take the goods at their appraised value, or to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do within thirty days after having received the preliminary proofs of loss required by the ninth article of these conditions. In case differences shall arise concerning the amount of any loss or damage by fire, the matter shall, at the written request of either party, be submitted to the judgment of arbitrators indifferently chosen, whose award, in writing, as to the amount of such loss and damage shall be binding on the parties; but such award shall not determine any question as to the liability of this company under this policy.

11. When property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

12. The company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or of deviation from the laws or regulations of police, made to prevent accidents from fire, in places where laws and regulations on this subject exist.

13. It is furthermore hereby expressly provided that no suit or action of any kind against said company for the recovery of any claim upon, under, or by virtue of this policy shall be sustainable in any court of law or chancery unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur;

and in case any such suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

48 (Indorsed:) No. 372. Home Insurance Company; office No. 135 Broadway, New York.

Premium	$40
Policy	1
Survey	1
Stamp duty	
	$42

This policy expires Oct'r 24th, 1863. Ed. July, 1862. Agency at St. Paul, Minn.

DIRECTORS.—Charles J. Martin, president; Arthur F. Willmarth, vice-pres't; George C. Collins; Danford N. Barney; Lucius Hopkins; Thomas Messenger; William H. Mellen; Homer Morgan; Levi P. Stone; James Humphrey; George Pearce; Ward A. Work; James Low; Isaac H. Frothingham; Cha's A. Bulkley; George D. Morgan; Oliver E. Wood; Alfred S. Barnes; George Bliss; Roe Lockwood; Levi P. Morton; Curtis Noble; John B. Hutchinson; Charles P. Baldwin; Amos T. Dwight; Henry A. Hurlbut; Jesse Hoyt; William Sturgis; Cha's J. Martin; John R. Ford; Geo. T. Stedman, Cincinnati, O.; Sidney Mason; A. F. Willmarth; F. H. Cossitt; W'm R. Fosdick; David I. Boyd, Albany, N. Y.; Lewis Roberts; Samuel B. Caldwell; A. J. Wills; W'm H. Townsend; William Claflin, Boston, Mass.; P. C. Van Schaick; Thomas T. Buckley; James S. Sturges; Oliver S. Carter; Henry M. Taber.

John McGee, Secretary.
J. H. Washburn, Ass't Sec'ry.

49 No. 436. HOME INSURANCE COMPANY,
OFFICE NO. 4, WALL STREET, N. Y.,
St. Paul (Min.) Agency, Oct. 24, 1863.

Received of C. Weide & Bro. forty dollars, being the premium on four thousand dollars, insured under policy No. 372, which is hereby continued in force for one year, to wit, from the 24th day of October, 1863, until the twenty-fourth day of October, 1864, at noon.

Not valid unless countersigned by Borup & Oakes, agents of this company.

J. J. MARTIN, *President.*
BORUP & OAKES, *Agents.*

J. MILTON SMITH, *Secretary.*

[25-c't stamp cancelled.]

No. 585. HOME INSURANCE COMPANY,
OFFICE NO. 135 BROADWAY, N. Y.,
St. Paul (Min.) Agency, Oct. 25, 1864.

Received from C. Weide & Bro. forty dollars, being the premium of four thousand dollars insured under policy No. 372, which is hereby continued in force for one year, to wit, from the 24th day of October, 1864, until the twenty-fourth day of October, 1865, at noon.

But this renewal shall not be valid unless countersigned by Borup & Oakes, agents of the said Home Insurance Company, at St. Paul, Min.

CHA'S J. MARTIN, *Pres't.*
BORUP & OAKES, *Agents.*

JOHN MCGEE, *Secretary.*
[25-cent rev. stamp cancelled.]

No. 728. STOCK OF GROCERIES, HOME INSURANCE COMPANY,
OFFICE NO. 135 BROADWAY, N. Y.,
St. Paul (Min.) Agency, October 24, 1865.

Received from Messrs. C. Weide & Bro. forty dollars, being
50 the premium on four thousand dollars insured under policy number 372, which is hereby continued in force for one year, to wit, from the 24th day of October, 1865, until the 24th October, 1866, at noon.

But this renewal shall not be valid unless countersigned by Borup & Oakes, agents of the said Home Insurance Company, at St. Paul, Minn.

CHA'S J. MARTIN, *Pres't.*
BORUP & OAKES, *Agents.*

JOHN MCGEE, *Sec'y.*
[25-c't rev. stamp cancelled.]

No. 939. HOME INSURANCE COMPANY,
OFFICE NO. 135 BROADWAY, N. Y.,
St. Paul (Min.) Agency, Oct. 24th, 1866.

Received from Cha's Weide & Bro. forty dollars, being the premium on four thousand dollars insured under policy No. 372, which is hereby continued in force for one year, to wit, from the 24th day of October, 1866, until the 24th day of October, 1867, at noon.

But this renewal shall not be valid unless countersigned by S. S. Eaton, agent of the said Home Insurance Company, at St. Paul, Minn.

CHA'S J. MARTIN, *Pres't.*
S. S. EATON, *Agent.*

JOHN MCGEE, *Sec't'y.*
[25-cent rev. stamp cancelled.]

B.

To The Home Insurance Company City of New York:

STATE OF MINNESOTA, *County of Ramsey, ss:*

Be it known that, on the 19th day of March, A. D. 1867, before
51 me, Mack J. Leaming, a notary public, legally qualified, for the county aforesaid, appeared Joseph R. Weide, one of the firm of Cha's Weide & Brother, who, being duly sworn according to law, declares under oath that The Home Insurance Company of the City of New York, through its agency at St. Paul, did, on the 24th day of October, A. D. 1862, issue to Cha's Weide & Brother their policy of insurance No. 372, the written body of which, with its immediate context, and of written indorsements and statements of renewals of said policy, are as below specified, said insurance terminating on the 24th day of October, 1863, at noon.

"No. 372.

"By this policy of insurance The Home Insurance Company, in con-

sideration of forty dollars to them paid by the assured hereinafter named—the receipt is hereby acknowledged—do insure Cha's Weide & Brother, Saint Paul, M., against loss or damage by fire, to the amount of four thousand dollars, on their stock of groceries, nails, hollow-ware, and other merchandise contained in their three-story brick store, situated on the south side of Third street, between Minnesota and Robert street, Saint Paul, Minnesota. For more particular description of said premises reference is made to survey No. 372, filed in the office, which is hereby made a part of this policy.

"Insurance acknowledged in—

The Ætna Ins. Co., Hartford	$4,000
Phœnix	4,000
City Fire	3,000
Hartford	4,000
Ætna	6,000

"Feb. 1st:

Ætna Ins. Co	$5,000
Hartford	5,000
International	5,000

"Jan. 30, 1866, other insurance permitted without notice until required.

"S. S. EATON, *Agent.*

"This policy expires Oct. 24, 1863."

52 Which said policy was subsequently continued in force by renewal until the 24th day of October, 1864; and subsequently by renewal until the 24th day of October, 1865; and subsequently by renewal until the 24th day of October, 1866; and subsequently by renewal until the 24th day of October, 1867, at noon. And besides that insurance, there was $49,600 additional insurance made thereon, as per Schedule G, herewith annexed, containing written portions of policies, and no other than above specified. That the whole cash value of the property so insured amounted to the sum of seventy thousand six hundred and seventy-six and $\frac{14}{100}$ dollars, at the time immediately preceeding the disaster, interest therein being absolute. The occupations and occupants of the premises, in its several parts, being used by the assured as a wholesale grocery store, and occupied by them only; a part of the second story was used for the storage of mattresses and furniture owned by Etter Bro's, St. Paul, Minn. The fire occurred on the morning of February 22nd, 1867, and originated from cause unknown.'

The amount of property belonging to them so insured, which was totally destroyed by fire, was	$70,654 85
The sum of damages on that saved, as per appraisement, being	
Amount of claim	$4,000

as are particularly defined and expressed in the accompanying statement appended hereto and made part of this voucher.

That the statement of the particulars of the account of the loss are believed to be just and true, and that no articles or property are specified or claimed for therein but such as belonged to—

JOSEPH R. WEIDE.

Joseph R. Weide, having first been duly sworn according to
53 law, and subscribed the preceeding declaration and affidavit, I have in witness thereof set my hand and seal of office in the State, county, and date aforesaid.

[SEAL.] MACK J. LEAMING,
Notary Public Ramsey County, Minnesota.

[6-c't rev. stamp cancelled.]

STATE OF MINNESOTA, *County of Ramsey, ss:*

I, Mack J. Leaming, a notary public in and for said county, residing most contiguous to the property of Cha's Weide & Brother, insured as set forth in the preceeding affidavit, certify that I am not concerned in that loss, or any claim, either as a creditor or otherwise, or related to the insured or sufferers, and that I am acquainted with the character and circumstances of Cha's Weide & Brother, having made diligent inquiry into the facts set forth in the foregoing statement, and believe and know that they, really by misfortune, without fraud or evil practice, sustained by the described fire loss and damage to the amount of seventy thousand six hundred and fifty-four and $\frac{85}{100}$ dollars, the sum stated in their affidavit of loss.

In testimony whereof I have hereunto set my hand and official seal this 19th day of March, A. D. 1867.

[SEAL.] MACK J. LEAMING,
Notary Public Ramsey County, Minnesota.

54 SCHEDULE G.

No. 128. $5,000

By this policy of insurance the president and directors of The Insurance Company of North America, Philadelphia, in consideration of the receipt of fifty dollars, do insure Cha's Weide & Brother against loss or damage by fire to the amount of five thousand dollars on their stock of groceries, provisions, and other merchandise not hazardous and hazardous contained in the three-story brick building, with entire side walls and metal roof, occupied by them, and situate on the south side of Third street, between Robert and Minnesota streets, Saint Paul, Minnesota. Other insurance permitted without notice until required. This policy expires November 14, 1867.

SCHEDULE G.

No. 97. *Underwriters' Insurance Company.* $4,000.

Germania, Niagara, Hanover, Germania, all of the city of New York, each acting and contracting for itself, and not for the other or others, in consideration of the one-fourth part of the sum of thirty dollars to each of them paid by the assured hereinafter named, do each insure Cha's Weide & Bro., of Saint Paul, Minnesota, against loss or damage by fire to the amount of one-fourth part of the sum of four thousand dollars, for the term of one year, upon their stock of groceries, nails, hollow-ware, and other merchandise contained in the three-story brick building situate on the south side of Third street, between Robert and Minnesota
55 streets, Saint Paul, Minnesota. Other insurance permitted without notice, until required. Reference to application and survey No. 97, furnished by the assured, on file in the office of the Saint Paul

agency, which is hereby made a part of this policy. This policy expires February 1st, 1867, at noon. Which said policy was subsequently continued in force, by renewal, until the 1st day of February, 1868, at noon. Said policy was indorsed on Jan'y 31, 1867, at noon, as follows:

At renewal, this 1st day of February, 1867, the additional sum of five thousand dollars is hereby insured on the within described stock, making the amount now covered by this policy nine thousand dollars.

CURTIS & MOULTON, *Ag'ts.*

SCHEDULE G.

No. 1096. *City Fire Insurance Company, Hartford, Conn.* $3,000.

By this policy of insurance, The City Fire Insurance Company, in consideration of thirty dollars to them paid by the assured hereinafter named, the receipt of which is hereby acknowledged, do insure Cha's Weide & Bro., of Saint Paul, Minn., against loss or damage by fire to the amount of three thousand dollars, for the term of one year, on stock of groceries, nails, hollow-ware, and other merchandise contained in a three-story brick building, situated on the south side of Third street, between Robert and Minnesota streets, St. Paul, Minnesota. For further particulars reference is made to application and survey No. 1096, furnished by the assured, on file in the office of the Saint Paul agency, which is hereby made a part of this policy. Permission granted
56 to keep for sale gunpowder in close tin canisters, not to exceed twenty-five pounds, and sold by daylight only. $4,000 in Home, N. Y., $4,000 in Phœnix, Hartford, $10,000 in Ætna, Hartford, $4,000 in Huilford Co. Other insurance allowed without notice until required. This policy expires November 4, 1864. Which said policy was subsequently continued in force, by renewal, until the 4th day of November, 1865; and subsequently, by renewal, until the 4th day of November, 1866; and subsequently, by renewal, until the 4th day of November, 1867, at noon.

SCHEDULE G.

No. 1058. *Saint Paul Fire and Marine Ins. Company.* $5,000.

By this policy of insurance, in consideration of fifty dollars, do insure Cha's Weide & Bro. against loss or damage by fire to the amount of five thousand dollars on their stock of groceries, provisions, and other merchandise, not hazardous and hazardous, contained in the three-story brick building, with side walls and metal roof, occupied by them, situate on the south side of Third street, between Minnesota and Robert streets, Saint Paul, Minnesota. Other insurance permitted without notice until required. This policy expires on the fourteenth day of November, 1867, at noon.

SCHEDULE G.

No. 998. *Hartford Fire Insurance Company, Hartford, Conn.* $4,000.

57 By this policy of insurance The Hartford Fire Insurance Company, in consideration of the receipt of forty dollars, do insure Cha's Weide & Brother, and their legal representatives, four thousand dollars on their stock of groceries, nails, hollow-ware, and other merchandise, contained in a three-story brick building situated on the south side,

of Third street, between Robert and Minnesota streets, Saint Paul, Minnesota. For further particulars see application and survey No. 998, furnished by the assured, on file in the office of the Saint Paul agency, which is hereby made a part of this policy. Other insurance allowed without notice until required. This policy expires August 2nd, 1865, at noon. Which said policy was subsequently continued in force, by renewal, until the 2nd day of August, 1866; and subsequently, by renewal, until the 2nd day of August, 1867, at noon. Said policy was indorsed on the first day of Feb., 1865, as follows: In consideration of twenty-five dollars, the additional sum of five thousand dollars is hereby insured on the within-described stock, making the sum now covered by this policy nine thousand dollars.

O. CURTIS, *Agent.*

SCHEDULE G.

International Fire Insurance Company of the City of New York.

No. 12. $5,000

By this policy of insurance The International Fire Insurance Company, in consideration of thirty and $\frac{50}{100}$ dollars to them paid by the hereinafter named, the receipt of which is hereby acknowledged, do insure Cha's Weide & Bro. against loss or damage by fire, to the amount of five thousand dollars, for the period of one year, on their stock of groceries, nails, hollow-ware, and other merchandise contained in a three-story brick building situated on the south side of Third street, between Minnesota and Robert streets, Saint Paul, Minnesota. For further particulars see application and survey No. 12, furnished by the assured, on file in the office of the Saint Paul agency, which is hereby made a part of said policy. Other assurance allowed without notice until required. This policy expires the first day of February, 1866, at noon. Which said policy was subsequently continued in force, by renewal, until the first day of February, 1867, at noon: and subsequently, by renewal, until the first day of February, 1868, at noon.

58

O. CURTIS, *Agent.*

SCHEDULE G.

No. 1343. *Ætna Insurance Company of Hartford, Conn.* $10,000.

By this policy of insurance The Ætna Insurance Company, in consideration of one hundred dollars, to them paid by the assured hereinafter named, the receipt of which is hereby acknowledged, do insure Cha's Weide & Bro., of Saint Paul, Minn., against loss or damage by fire, to the amount of ten thousand dollars, for the term of one year, on their stock of groceries, nails, hollow ware, and other merchandise contained in the three-story brick building, situated on the south side of Third street, between Robert and Minnesota streets, Saint Paul, Minnesota. Further particulars see application and survey No. 1343, furnished by the assured, on file in the office of the Saint Paul Agency, and which is hereby made a part of said policy. Other insurance allowed without notice until required. Which said policy was subsequently continued in force, by renewal, until the second day of August, 1866; and subsequently, by renewal, until the 2nd day of August, 1867, for $10,000. Said policy was indorsed on the first day of February, 1865, as follows: In consideration of seventy-five dollars, the additional sum

59

of five thousand dollars is hereby insured on the within-described stock, making the sum now insured fifteen thousand dollars.

Saint Paul, February 1st, 1865.

CURTIS & ETHERIDGE, *Agt's.*

And on the second day of February, as follows:

In consideration of eighteen and $\frac{75}{100}$ dollars, the additional sum of five thousand dollars is hereby insured on the within-described stock, making the amount now covered by this policy, from Feb'y 2, 1866, to Aug. 2, 1866, fifteen thousand dollars.

CURTIS & ETHERIDGE, *Agents.*

SCHEDULE G.

No. 2323. *Phœnix Insurance Company, Hartford, Conn.* $4,000.

By this policy of insurance The Phœnix Insurance Company, in consideration of forty dollars, to them paid by the hereinafter named, the receipt of which is hereby acknowledged, do insure Cha's Weide & Bro., of Saint Paul, Minn., against loss or damage by fire to the amount of five thousand dollars, for the term of one year, on their store of fixtures, four hundred dollars; on their stock of groceries and other merchandise,
three thousand six hundred dollars, contained in the three-story
60 brick store situate on the south side of Third street, between Robert and Minnesota streets, Saint Paul, Minnesota. For further particulars reference is made to application and survey No. 2323, furnished by the assured, on file in the office of the Saint Paul agency, which is hereby made a part of this policy. Permission granted to keep for sale gunpowder, in close tin canisters, not to exceed 25 pounds, and sold by daylight only. $4,000 in Home, N. Y.; $3,000 in City Fire, Hartford; $10,000 in Ætna, Hartford; $4,000 in Hartford Company. Other insurance allowed without notice until required. Which said policy was subsequently continued in force, by renewal, until the 4th day of November, 1865; and subsequently, by renewal, until the 4th day of November, 1866; and subsequently, by renewal, until the 4th day of November, 1867, at noon. Said policy was endorsed on February 4th, 1866, as follows: In consideration of $33 75, the additional sum of six thousand dollars is hereby insured on the within-described stock from February 4th, 1866, making the amount now covered by this policy $10,000.

CURTIS & ETHERIDGE, *Agents.*

And on the 4th day of November, 1866, as follows: Upon renewal, this 4th day of November, the amount insured by the within policy is hereby decreased five thousand dollars, leaving five thousand dollars still pending on said policy.

ETHERIDGE & POWELL, *Agents.*

61 C.

We hereby propose to the Ætna Insurance Company of Hartford to accept the sum of twenty-nine thousand two hundred and sixty-one $\frac{30}{100}$ dollars as a basis of settlement, placing our loss by the fire of Feb. 22nd, 1867, at the above figuures, and will accept of said Ætna Insurance Company as full settlement under its policy 1343, covering ten thousand dollars, its pro rata amount of said $29,261 30, whole loss as above,

on which is insured the sum of $44,600 in addition to the said $10,000. This proposition is open for thirty days from this date.

St. Paul, March 6, 1867.

CHA'S WEIDE & BRO.

[5-c't rev. stamp cancelled.]

D.

We hereby propose to the Underwriters' Agency of New York to accept the sum of twenty-nine thousand two hundred and sixty-one $\frac{30}{100}$ dollars as a basis of settlement, placing our total loss by the fire of February 22, 1867, at the above figures, and will accept of said Underwriters' Agency as a full settlement under policy No. 97, covering nine thousand dollars, its pro rata amount of said $29,261 36, [dollars,] whole loss as above, on which is insured the sum of $49,600, in addition to the said 9,000 dollars. This proposition is open for thirty days from this date.

St. Paul March 16, 1867.

CHA'S WEIDE & BRO.

[5-c't rev. stamp cancelled.]

62 E.

ST. PAUL, *May 25th*, 1867.

To the Underwriters' Agency:

The undersigned, for the purpose of compromise and to avoid litigation, hereby offers to settle the policy they hold against your company on their merchandise lately consumed by fire, on the basis of an entire loss of $29,261 30, (twenty-nine thousand two hundred and sixty-one dollars,) provided that this offer is accepted and the money paid without delay.

Yours, &c.,

CHA'S WEIDE & BRO.

F.

ST. PAUL, *25th May*, 1867.

To the Home Insurance Company of New York:

The undersigned, for the purpose of compromise and to avoid litigation, hereby offer to settle the policy they hold against your company on their merchandise lately consumed by fire on the basis of an entire loss of $29,261 30, [dollars,] provided that this offer is accepted and the money paid without delay.

Yours, &c.

CHA'S WEIDE & BRO.

63 G.

Inventory of goods taken Sept. 27, 1863.

Merchandise	$21,372 34	
Book ac. as per ledger & blotter, including notes, cash in bank, drawer	18,384 65	
Real estate	300 00	
Store fixtures, office	396 60	
		$40,953 59
Liabilities		8,921 14
Total assets		$32,032 45

1864.

Merchandise	$36,791 21	
Book ac., ledger, & blotter, including notes, cash in bank, &c	24,921 69	
Real estate	900 00	
Store fixtures & office	396 60	
		63,009 50
Liabilities, (with interest)		17,000 00
Total assets		46,009 50

1865.

Merchandise	$47,561 87	
Book ac., notes, cash in bank & safe	30,927 62	
Real estate	900 00	
Store fixtures, office	396 60	
		79,786 09
Liabilities, (with interest)		27,140 51
		52,645 58

1866.

Merchandise	$74,520 74	
Book ac., notes, cash in bank and safe	39,169 64	
Real estate	900 00	
Store fixtures, safe	396 60	
		114,986 98
Liabilities		56,656 29
		$58,330 69

64 H.

[Page 63.]

Merchandise account.

Oct.	1	To am't forward	36	77,538 16	Oct.	18	By merchandise	72	9,417 25
	18	" sundries	72	11,738 42	Nov.	3	" "		7,122 33
	30	" "	91	31 50	"	7	" "		813 44
Nov.	2	" "	92	42 50	"	8	" "		119 17
Oct.	18	" H. Reegreet	92	155 29	Nov.	16	" "		2,532 77
Nov.	3	" sundries	93	2,393 54	"	21	" "		3,032 75
"	5	" Catlin	94	283 00	"	27	" "		1,880 29
"	5	" Greenleaf	94	259 50	"	30	" "		1,401 74
"	5	" J. C. R. & Co	94	65 85	Nov.	30	To balance		69,364 15
"	5	" Cutler, Secomb & Co.	94	90 30					
"	5	" John Donohu & Son.	95	918 65					
"	7	" sundries	97	148 20					
"	8	" J. W. Simpson	98	860 35					
"	8	" E. Bromdon & Co.	98	397 70					
"	16	" sundries	105	231 55					
"	21	" "	114	193 72					
"	27	" "	121	53 61					
"	30	" "	125	289 17					
				$95,683 37					95,683 87
December	1	To balance		69,364 15	Dec.	6	By merchandise	130	1,078 46
"	6	" merchandise	130	90 68	"	8	" "	135	1,576 82
"	8	" "	135	258 28	"	15	" "	140	1,047 65
"	15	" "	140	2,769 32	"	26	" "	156	4,218 14
"	26	" "	256	436 58	1867.				
1867.					Jan.	2	" "	161	953 18
Jan'y	2	" "	161	300 50	"	2	To balance		64,274 55
				73,149 51					73,149 51
Jan.	2	To balance		64,274 55	Jan.	3&4	By merchandise		1,087 91
"	3 & 4	" merchandise		341 27	"	5	" "	167	645 76
	5	" "	167	68 90	"	8	" "	169	336 44
	8	" "	169	139 23	"	12	" "	172	479 99
	12	" "	172	330 79	"	16	" "	175	346 52
	16	" "	175	99 46	"	22	" "	177	126 73
	22	" "	177	462 01	"	26	" "	182	1,465 20
	26	" "	182	176 95	"	31	" "	186	821 22
	26	" "	182	156 95			To balance		61,073 17
	31	" "	186	132 82					
				$66,182 94					$66,182 94

65 [Page 68.]

Merchandise account.

1866.					1867.				
Jan.	31	Am't forw'd	63	61,073 17	Feb.	10	By merchandise	191	696 60
Feb.	9	" merchandise	191	404 39	"	18	" "	195	241 96
"	18	" "	194	30 35					
"	18	" E. Schneider	195	160 06					
"	20	" Taylor & Wright	197	690 65					
"	21	" C. W. Sanford	197	102 25					

66 Examination I. Vonly ORC

STATE OF MINNESOTA, *Ramsey County, ss:*

Charles A. B. Weide, being duly sworn according to law, deposes and says that he is a resident of the city of Saint Paul, Ramsey County, Minnesota, and is a member of the firm of Cha's Weide & Bro., which is composed of himself and his brother Joseph R. Weide, and for the past ten years have done a wholesale and retail grocery trade in the city of

Saint Paul. For about six years was engaged in selling groceries at retail, and for the past three or four years have been engaged in the wholesale grocery trade exclusively. Our place of business was at 137 Third street, St. Paul.

The firm commenced business in 1859; had about $12,000 worth of merchandise, groceries, & hardware, which was given them by their father, Bernard Weide, & this was their entire capital at the time.

The firm have always taken an account of stock once during the year, either in January or March; the last account of stock taken February 28th, 1866, and amounted to seventy-four thousand five hundred and twenty $\frac{74}{100}$ dollars. I assisted in taking the inventory of the stock; it was taken in detail, each article was weighed or counted, and I know was correctly taken. Our inventories were always in a book kept for the purpose, and extensions and footings were made in this book, and the amount of stock carried to the merchandise account in the ledger. I examined the extensions and footings of the inventory of February,
1866, and know of my own personal knowledge that we had in
67 the store on the 28th day of February, 1866, merchandise to the amount of $74,520 74. The stock on hand was taken up at its cash value at the date of taking the inventory February 28, 1866, and was worth in cash $74,520 74. The inventory embraced no articles but such as were kept on sale by us.

Our merchandise sales for the year ending February 28, 1866, were one hundred and fifty-two thousand dollars; of this I am positive. We have purchased from February 28, 1866, to date of fire, merchandise to the amount of one hundred and thirty-five thousand dollars, from the best of my knowledge. The principal items in our stock February 28, 1866, were tobacco and cigars, which amounted to about thirty-five thousand dollars, and teas amounting to fifteen thousand dollars, and coffee amounting to between three and four thousand dollars, and sugar amounting to between six and seven thousand dollars, and syrup amounting to between twelve and fifteen hundred dollars, and fish amounting to between seven and ten hundred dollars, and wooden ware from four, five, to seven hundred dollars' worth, and of soap from twelve to fifteen hundred dollars, and of nails about five hundred dollars' worth, and of dried fruits about fifteen hundred dollars' worth. The miscellaneous merchandise about the store, aside from these articles named above, were in quantity and value about the same as at date of fire February 22, 1867. The price of cigars and tobacco were about the same at date of fire as when inventory was taken in 1866. On teas the decline in price was about ten per cent., and other goods declined during the year about 5 per cent. Our stock of cigars and tobacco on
hand at date of fire was from twelve to fifteen thousand dollars
68 less than in February, 1866. We have sold from February, 1866, to date of fire, tobacco and cigars to the amount of about twelve thousand dollars. Joseph R. Weide made most of the purchases. Of the thirty-five thousand dollars' worth of cigars & tobacco on hand February 28, 1866, fifteen thousand dollars was in cigars and twenty thousand dollars was in tobacco; this includes fine-cut. Of the twelve thousand dollars' worth of tobacco sold during the year ending at date of fire about two-thirds was tobacco and the balance was cigars. We have purchased more or less tobacco and cigars during the year 1866. All goods purchased by Weide & Bro. since February, 1866, were taken into their store, except about nine hundred dollars' worth received subsequent to the fire. We had no goods stored outside our store at the date of the fire. We had in our cellar at the time of fire 10 hhds. clear Cuba sugar;

average weight was about 1,600 lbs. No other sugar in the cellar. There was also in cellar seventeen or twenty-seven barrels syrup, from twenty to twenty-five barrels of white fish; also two & half barrels of snuf; also about twenty barrels of herring & ten barrels vinegar, & might be more vinegar; no other articles in cellar. In third story was wooden ware, baskets, & brooms; second story there were cigars and tobacco and some wooden ware. There was also some furniture stored in the 2nd story belonging to Etter. None of it had been taken away; it was all there. On the first floor were teas, spices, dried apples, and the greater part of our cigars; there was also on the first floor three hundred barrels Porto Rico sugar and other sugars. We had at date of fire about one hundred chests of teas of different kinds. We had,
69 in addition, some caddies of tea; had about forty caddies of tea up-stairs and down. There was about fifty-five barrels of dried apples; they were bought in New York; have bought two hundred barrels of dried apples since February 28, 1866. All the dried apples were purchased in New York City. We kept no freight account. Our goods came via Pra. du Chien & La Crosse, and thence to this point by river. We have received about fifteen hundred dollars' worth of goods since the close of navigation last fall. Our last goods received last fall were received about the last of October, 1866. Our sales from February 28, 1866, to date of fire, 1867, was about $130,000; for year ending 28 February, 1866, $152,000; for year ending February, 1865, $130,000 to $140,000. Our gross profits on sales for year ending February 28, 1866, were ten thousand five hundred dollars. Our expenses and amounts drawn out by myself and brother were about forty-five hundred dollars, leaving balance about six thousand dollars in the business. Our profits on sales for the year ending February, 1865, were from seventeen to eighteen thousand dollars. Our expenses and amounts drawn out by myself and brother, Joseph R. Weide, during the year was about twenty-five hundred dollars. Our gross profits from February, 28, 1866, to date of fire were about nine per cent., gross, which was about two per cent. less than preceeding year. Our cash sales for the month of July, 1866, were about ten thousand dollars; this was to the Red River trade. Our cash sales since July up to date of fire would average from twenty to twenty-five dollars per day. Most of our sales were for credit.
70 We had outstanding at date of fire, for goods sold and due, about $22 to 24,000. Our indebtedness at date of fire was eighteen to twenty thousand dollars, mostly due to our family; about three thousand of this amount we owed for goods purchased; the twelve thousand dollars given us by our father is not included in the above indebtedness. We have furnished all the companies interested in our loss with proofs and statements of our loss, the same as those furnished the Hartford Fire Insurance Company.

Question 1. Have the Phœnix & City Fire Insurance companies settled and paid their loss on the basis of proofs as furnished the Hartford Fire Ins. Co.?

Answer. They have, with a discount.

Question 2. Was the discount more than the usual interest for sixty days?

Answer. It was slightly more in consideration of immediate payment, as we had certain debts we had to pay.

Question 3. Was the discount made slight or considerable?

Answer. Deponent declines to answer any further questions on the subject of discounts made to the other companies.

Question 4. Have you settled, or agreed to settle, or proposed to set-

tle with any of the other companies interested in your loss on any other basis than that furnished the Hartford Ins. Co.?

Answer. Deponent declines to answer this question or any further questions as to the mode of settlement with the other companies interested in the loss.

Question 5. Do you decline to answer the last question?

Answer. I do.

71 Question 6. Has O. Curtis, the adjuster of the Ætna Ins. Co., or any other adjuster or agent of the Ætna Ins. Co., paid or agreed to pay you the full amount of their policy on your stock?

Answer. They have agreed to settle on the same basis as the Phœnix Ins. Co. & City Fire Ins. Co., and we have agreed to accept it, and expect the money every day.

Question 7. Is the basis of such settlement substantially the same as that you have furnished the Hartford in these proofs?

Answer. The proofs are the same.

Question 8. Is the basis of settlement substantially the same?

Answer. I decline to answer any further questions touching the settlement with the other companies.

Question 9. Do you decline to answer the last question put to you?

Answer. I do.

The fire in our store occurred on the 22nd of February, at about 4 o'clock in the morning. I arrived at the store at about five o'clock. The store was all on fire. There was but few goods saved, say about $21 98. No one slept in the store. The porter and myself left it about half past 5 o'clock the evening previous. The back door of the store was locked, not barred. The porter this evening put 3 kegs of nails against the back door. I came last out of the store, and locked it, and gave the key to the porter. I didn't carry a key of the store.

72 The porter carries the key to the store all of the time. I was not in our store after leaving at 5.30 in the evening. I have suspicions that the store was broken into, robbed, and set on fire. The stock in our store, at the date of the fire, was that amount as stated in our proofs, as furnished the Hartford. About one year ago we discovered that an attempt had been made to break through the brick wall in rear of L or one story part of our store. The attempt was unsuccessful, as there was standing against that portion of the wall where the hole was made some tubs and pails. These prevented any one from getting in. There was some negroes living in the rear of our store, and we suspected that they had something to do with it, or knew of it in some way. We had the hole in the wall closed up on the day it was discovered. The attempt has not been repeated, to my knowledge. We had shutters on the windows and doors on the first floor of our store; these were put up every night; on the night of the fire were up. The person who first discovered the fire says it seems to have originated or was burning most freely near the office, which was located in the back part of the main building. There was no shutters on the doors or windows of the 2nd and 3d stories; had 2 stoves in the store, one in the store and one in the office, both well secured; do not think the fire could have originated from either of these; were always very careful when we left the store; sometimes sprinkled water around them to prevent any accident from that source; ashes were thrown into the rear in an open lot; matches were left in a safe place; had no loose straw about the store; had

73 about 10 gallons coal oil in the store at the time of the fire; this was in the back store or ware-room; had no benzine or gunpowder in the store at the date of the fire. The amount of our loss on the

22nd day of February, as set forth in our proofs to the Hartford Fire Insurance Company, is the same we have claimed of all the companies interested, and we have not represented any other amount as such loss. The schedule marked A, attached to this affidavit, contains a more detailed statement of the stock in our store at date of fire.

(Signed) CHA'S WEIDE.

Subscribed and sworn to before me this 3d day of April, 1867.

(Signed) S. S. EATON,
Notary Public.

74 "A."

140 caddies Rose navy tob., av'g each 20, 2,800, 65	1,820 00
50 " XXX 10's, " 40 ea., 2,000, 65	1,300 00
15 boxes 10's, 115 ea., 1,725, 60	1,035 00
60 caddies Long Tens, 20 1,260, 70	882 00
5 boxes Natural Leaf, 40, 200, 1 25	250 00
110 caddies Idaho Diadem, & Y. America tob., 20, 2,200, 65	1,430 00
160 bbls., 50, S. C. smoaking tob., 65 ea., 10,400, 18	1,952 00
95 " Tip Top & Long Cut, " 7,000, 22	1,587 50
60 kegs, 30, Gold Thread chewing tob., 10 ea., 600, 1 10	678 00
10 h'lf bbls., 40, M't Vernon " " 30, 300, 1 05	319 00
10 boxes, 25, Star of the West " 20, 200, 1 15	232 50
6 " 25, Granger tob., " 20, 120, 65	79 50
8 kegs, 40, Gold Dust " 30, 240, 90	219 20
3 boxes, 1 00, Game Cock tob., 100, 300, 60	183 00
10 " Eagle tob., smoking, 20, 200, 29	54 00
230 kegs nails, 230, 7½	1,720 25
40 coils rope, 2,400, 22	528 00
Wrapping paper, 1,500, 6	90 00
160 bbls., 40, sugar R. R., 250 ea., 40,000, 14½	5,864 00
40 " 40, granulated sugar, 260 10,400, 13½	1,430 00
60 " 40, brown sugar, 230, 13,800, 11¼	1,714 50
10 hhd. Cuba " 1,600, 16,000, 13	2,000 00
85 cases peaches, 9 00	765 00
40 chests black tea, 40 ea., 1,600, 1 05	1,680 00
Pails, tubs, & churns	800 00
20 chests G. P. tea, 70 ea., 1,400, 1 65	2,310 00
15 " Imp. tea, 70 " 1,050, 1 65	1,732 50
15 " Vol. Y. H. tea, 55, 825, 90,	742 50
9 " Clushman Y. H., 60, 540, 1 45	783 00
65 boxes Thomas Saleratus, 60, 3,900, 10	390 00
25 " soda Thomas, 60, 1,500, 10	150 00
	$34,711 45

75 Am't bro't forward	34,711 45
6 kegs plums, 800, 16	128 00
9 " German prunes, 1,100, 21	231 00
115 boxes glass, assorted sizes, 5¾	661 25
30 cases matches, No. 10, asst., 12 00	240 00
110 " " " 7½	825 00
90 boxes clothes pins, 1 00	91 00
140 " soap, 60 ea., 840, 7½	630 00
30 " Milwaukee soap, 60 ea., 1,800, 10	180 00

3½ bbls., 40, snuff, 700, 63		442 20
Sash		160 00
70 boxes pipes, 2 00		140 00
80 bags shot, 3 25		260 00
18 boxes codfish, 8½		153 00
40 bbls. herrings, 10 50		420 00
4 " Norway herring, 21		84 00
8 bbls. vinegar, 40 ea., 3 20, 25		80 00
400 lbs. candle-wick, 60		240 00
140 " nutmegs, 130		182 00
18 bbls. Broakly syrup, 40, 720, 65		468 00
9 " syrup, 360, 80		288 00
6 kegs sal soda, 660, 05		33 00
25 bbls., 25, ginger snaps, 80 ea., 1,600, 14		229 00
12 " 25, sugar crackers, 70, 840, 12,		103 80
35 " " soda, do., 60, 2,100, 8		176 75
10 " 25, butter, do., 65, 650, 8		54 50
45 boxes starch, 40, 1,800, 8		144 00
6 " corn, " 36, 216, 10		21 60
65 caddies Imp. & G. P. Tea, 16½, 1,172½, 1 66		716 00
40 boxes pepper, 20, 800, 20		160 00
15 " ginger, 20, 300, 18		54 00
3 bbls. cotton twine, 60, 180, 45		81 00
800 " jute twine, 31		248 00
Taney candy, 80 boxes, 50, 400, 32		128 00
2 bbls., 25, almonds, 180, 35		63 50
Am't bro't over		43,827 05
76 Am't bro't forward		43,827 05
4 bbls. peanuts, 80, 320, 13		42 60
6 " 25, Eng., walnuts, 60, 360, 18		66 30
2 " 25, pecans, 5, 190, 20		38 50
3 " 25, filberts, 80, 200, 13		31 95
55 " d. apples, 200, 11,000, 13½		1,980 00
15 doz. mop handles, 3½		48 75
160 cloves, 50		80 00
8 cases sardines, ¼, 800, 19		152 00
3 " " ½ 300, 33		99 00
70 doz. washboards, 3½		245 00
40 boxes raisins, 4¼		170 00
80 doz. brooms, 3 00		240 00
20 " do. 2 10		42 00
2 bags spice, 240, 35		84 00
6 boxes rock candy, 210, 30		63 00
40 mustard, 2 doz. ea., 1 40		56 00
90 cans " 6d. ea., 540, 20		108 00
40 " " Durham, 4 ea., 160, 25		40 00
15 " " do., 6, 90, 25		22 50
60 doz. blacking, large, 66		39 60
40 " do. small, 35		14 00
20 boxes stove polish, 10 gross, 600		60 00
15 " wash blue, 5 ea., 75, 40		30 00
20 " domestic indigo, 3 ea., 100, 33		33 00
8 " French mustard, 3 46		27 20
35 doz. bed cords, 2 80		98 00

4 bbls. currants, 880, 17		149 60
22 chests Japan tea, 45, 990, 1 10		1,089 00
120 M G D Caps, 40		48 00
30 M Prussian waterproof, 85		25 55
Am't bro't over		$49,050 55
77 Am't bro't over		49,050 55
30 doz. stove brushes, 2 00		60 00
10 " scrubbing " No. 1, 4 20		42 00
18 " do. " 2, 3 46		51 20
8 " " " 3, 2 25		18 00
12 boxes Star candles, 40, 480, 19		91 20
7 " tallow " 50, 350, 13½		47 25
15 h'lf-bbls. mackerel, 10½		157 00
22 bbls. white fish, 81¼		181 50
16 boxes coffee essence, 3 00		48 00
80 " smoked herrings, 80		64 00
15 " liquorice, 6, 90, 22		19 80
9 " olive oil, 8½		76 50
Fancy soap		175 60
30 drums figs, 245, 30		73 50
3 frails dates, 612, 21		128 52
4 boxes citron, 21, 84, 35		29 40
6 " maccaroni, 72, 20		14 40
8 " castile soap, 35, 280, 21		58 30
6 bbls., 30, rice, 1,150, 10½		117 30
30 mats cassin, 125, 85		106 25
8 boxes ground cinnamon, 12, 96, 40		38 40
100 " mace, 1 30		130 00
4 bbls. d. peaches, 120, 480, 221		105 60
45 M cigars, Henry Clay, 28		1,260 00
30 M " Punch, No. 1, 44		1,320 00
7 M Crown de Spaniola, 70		490 00
65 M El Rio & Abego, 25		1,625 00
15 M E. Favorite, 40		600 00
22 M Upham, 30		660 00
13 M Black Sea, 55		715 00
18 M Half Spanish, 10		180 00
4 M Le Cuarer, 48		192 00
6 M Jockey Club, 32		192 00
5 M El de Segnis, 30		150 00
		58,258 67
78 Am't bro't over		58,268 67
4 doz. bbl. beans, 3 00		12 00
45 cans cream tarter, 450, 20		90 00
96 doz. extract lemon, 1¼		120 00
35 " " vanilla, 1¾, 61		61 25
85 " tapioca, 15		12 75
65 " sago, 12		7 80
2½ bbls. blackberries, 280, 28		78 40
1¼ " cherries, 215, 20		43 00
180 doz. tacks, 8×10, 45		81 00
9 " baskets, 8 00,		72 00
135 tea caddies, 60		81 00

79 And afterwards, to wit, on the 27th day of July, 1869, the following was had in said cause, to wit:

CHARLES WEIDE AND JOSEPH R. WEIDE
vs.
THE HOME INSURANCE COMPANY.

And now, this cause having been tried before a jury, who found a verdict therein in the sum of four thousand five hundred and eighty-three dollars and thirty cents for the plaintiffs, and a motion for a new trial having been made by the defendant and denied by the court, and the clerk having computed the interest on the amount of said verdict and ascertained the same to be the sum of twenty-seven dollars and forty-one cents, and the plaintiffs' costs herein having been taxed at fifty-eight dollars and thirty-seven cents:

Thereupon it is ordered and adjudged by the court that the plaintiffs do have and recover of and from the said defendant the sum of four thousand six hundred and ten dollars and seventy-one cents, the amount of said verdict and interest, together with the sum of fifty-eight dollars and thirty-seven cents costs, taxed as aforesaid; and that the plaintiffs have execution therefor.

Judgment record signed this 27th day of July, A. D. 1869.

H. E. MANN, *Clerk*,
By W'M A. SPENCER, *Deputy*.

Damages	4,610 71
Costs	58 37
	$4,669 08

80 And afterwards, to wit, on the 3d day of August, A. D. 1869, at the chambers of the Hon. Rensselaer R. Nelson, on of the judges of said court, a writ of error was duly allowed in said cause; which allowance is in the words and figures following, viz:

CHARLES WEIDE AND JOSEPH R. WEIDE
vs.
THE HOME INSURANCE COMPANY.

And now, upon filing the security approved by in this cause, upon application of the defendant, the writ of error to the Supreme Court therein is hereby allowed.

August 3, 1869.

R. R. NELSON,
U. S. Dist. Judge.

And afterwards, to wit, on the 4th day of August, 1869, came the said defendant by its attorneys, and lodged in the clerk's office of said court a copy of the writ of error issued herein, endorsed as follows, viz:

U. S. circuit court, district of Minnesota.

CHARLES WEIDE AND JOSEPH R. WEIDE
against
THE HOME INSURANCE COMPANY.

Copy of writ of error lodged, in pursuance of the statute of the Uni-

ted States in such case made and provided, for the above-named Charles Weide and Joseph R. Weide, defendants in error.

LAMPREYS,
JOHN B. BRISBIN,
Attorneys for Plaintiffs in Error.

81 To be delivered to defendants in error on demand.

CIRCUIT COURT OF THE UNITED STATES
OF AMERICA FOR THE DISTRICT OF MINNESOTA,
District of Minnesota, ss:

I, H. E. Mann, clerk of said court, do hereby certify and return to the hon. the Supreme Court of the United States that the foregoing is a full and complete transcript of the record, process, pleadings, orders, final judgment, and all other proceedings in said cause, and of the bills of exceptions therein, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcripts, and do hereby transmit therewith, the original citation of appeal, together with the proof of the service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the said court at Saint Paul, in the district aforesaid, this sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

[SEAL.] H. E. MANN, *Clerk.*

Writ eror	1 00
Return, 272 fol	40 80
Postage	90
	$42 70

82 (Indorsed:) U. S. circuit court, district of Minnesota. Cha's Weide et al. vs. Home Ins. Co. Return to writ of error.

(Indorsement on cover:) No. 335. The Home Insurance Company, plaintiff in error, vs. Charles Weide & Joseph R. Weide. Minnesota C. C. U. S.

Filed 8th December, 1869.

REC. 335—5

Supreme Court of the United States.

THE HOME INSURANCE CO.

vs.

CHARLES WEIDE AND

JOSEPH R. WEIDE.

POINTS FOR PLAINTIFF IN ERROR.

This action was brought by the defendants in error against the plaintiff upon a policy of insurance issued by the latter on the stock of groceries and other merchandise owned by the defendants in error and contained in the store occupied by them in the city of St. Paul. On the 22d day of February, A. D. 1867, the store and its contents were destroyed by fire, the defendants in error claiming a loss thereby to the amount of 70,654 85-100 dollars. They had at the time of the fire other insurance on the property to the amount of $51,000. Suit was brought upon the policy, and the defendants in error recovered a judgment for its full amount, whereupon the defendants below sue out this writ of error.

The plaintiffs below on their examination under oath, pursuant to the provisions of the policy, had sworn that their sales from February 28th, 1866, up to the time of the fire, were about $130,000, that their gross profits during that year wereab out nine

per cent., and that their last goods were received about the last of October, 1866, and that their purchases during the same period of time amounted to about $135,000. The extent of the loss rested entirely upon the testimony of the plaintiffs, and for the purpose of furnishing to the jury material from which the credibility of their evidence might be tested, the defendants below offered to show the general course of business at St. Paul, of the same character as that in which the plaintiffs were engaged.

For this purpose several witnesses engaged in the grocery business at St. Paul, acquainted with the Weides, were called, and by whom the defendant below offered to show that grocery merchants in the city of St. Paul had not for the then past six years, carried or had on hand more than one fifth of their annual aggregate sales at any one time on the average. The defendants also offered to show by the same witnesses, that such grocery merchants in St. Paul were not carrying and did not have on hand, on the 22d of February, 1867, more than one fifth of their annual aggregate sales, that their annual sales were the same as or larger than the plaintiffs' then and there, and that they dealt in the same kind of goods. The Court upon the plaintiffs' objection excluded this evidence, and the defendants except. (*Trans. Record*, p. 16.)

We think the testimony was competent. The plaintiffs' recovery rested exclusively upon the credibility of their own testimony. They had sworn as to the amount of their sales, and their purchases, for several years preceding the fire, and claimed in their declaration a loss to the amount of over $70,000. It was for the jury to determine whether this story was credible,—whether the plaintiffs were entitled to belief. Nothing peculiar, or unusual, was claimed for them in the management of their business. The proof shows nothing of the kind, and the presumption would necessarily be, that they prosecuted their business in the usual manner, and according to the ordinary course of trade. What the defendants sought to show, was what that ordinary course of

trade was. That was a fact. It was neither opinion nor hearsay. The ordinary course of trade, is as much a fact as is the ordinary course of the season. I suppose there can be no doubt that such a fact might be shown provided it tended in any degree to illustrate the credibility of a witness.

We insist that if it be true, that the statement made by plaintiffs, that at the time of the fire their stock amounted to over $70,000—while their sales during the preceding year amounted to $130,000, was inconsistent with the ordinary course of trade, such inconsistency might be shown. For the jury would be quite as likely to disbelieve the testimony of these two deeply interested witnesses, as to believe that human experience had been set aside and the ordinary course of trade reversed, in their particular instance.

We do not claim, nor is it necessary that we should, that the evidence of the plaintiffs being inconsistent with the course of trade, was conclusive against their credibility. It is not necessary that it should be. The fact under investigation was, whether the plaintiffs at the time of the fire had on hand goods to the amount and of the value claimed by them.

We sought to show that they did not, by proving that it would have been opposed to the experience of all those engaged in business of the same character and at the same place, and that in the ordinary course of trade, it would have been impossible for them to have had on hand that amount and value of stock. The fact sought to be shown was what the ordinary course of trade was. The deduction from that fact was for the jury to draw, and that a belief that the plaintiffs in their testimony and in their proofs of loss had falsely stated the extent of their loss, would have been a legitimate and reasonable deduction from such a fact, is, I submit, clear beyond question.

The courts have said that "evidence to be admissible need not "afford full proof of the fact which it is offered to establish, but it "is sufficient if it conduces in any reasonable degree to prove that "fact" (*Belden* v. *Lamb*, 17 Conn., 441.) Again: "Where "there is a spark of evidence of a fact it ought not to be excluded "from the jury" (*Fitzwater* v. *Stout*, 16 Penn. State, 22); and again: "Testimony cannot be excluded as irrelevant which would "have a tendency, however remote, to establish the probability or "improbability of the fact in controversy" (*Trall* v. *True*, 33 Maine, 367.) The probability or improbability of all human testimony is determined by its consistency with human experience. While such a test may not in all cases be unfailing in its accuracy, nevertheless it is recognized as among the surest tests which can be employed in the ascertainment of truthand cannot wisely or safely be dispensed with in the administration of justice. The facts to which the plaintiffs below testified were, as are claimed, opposed to experience and the ordinary and usual course of trade. If they were, then, they must to that extent be considered as improbable, and any testimony showing or tending to show such improbability must be competent. The general rule is clearly laid down by Mr. STARKIE in his work on evidence, sec. 18. He says—after speaking of presumptions in favor of a defendant from his goodness of character in society—"Upon similar grounds, presumptions may be derived "from the artificial course and order of human affairs and deal-"ings wherever any such course and order exist; because in the "absence of any reason to suppose the contrary, a probability "arises that the usual course of dealings has been adopted. Hence "presumptions are founded upon the course of trade, the course of "the past, the customs of a particular trade, or of a particular "class of people, and even the course of conducting business in the "concerns of a private individual, to prove a particular act done "in the usual routine of business."

The insurance policy in this case provided that the "insured "shall, if required, submit to an examination under oath by the

" agent or attorney of the company, and answer all questions
" touching his, her or their knowledge of anything relating to such
" loss or damage, or to their claim thereupon, and subscribe such
" examination, the same being reduced to writing." The policy also provides that " all fraud or attempt at fraud by false swearing
" or otherwie shall cause a forfeiture of all claim on this company
" under this policy."

Upon submitting to the examination provided for by the policy, the following questions were put to Mr. Charles Weide:

Ques. 1. Have the Phœnix and City Fire Insurance companies settled and paid their loss on the basis of proofs as furnished the Hartford Fire Insurance company? Ans. We have with a discount.

Ques. 2. Was the discount more than the usual interest for sixty days? Ans. It was slightly more, in consideration of immediate payment, as we had certain debts we had to pay.

Ques. 3. Was the discount made slight or considerable? Ans. Deponent declines to answer any further questions on the subject of discounts made to other Companies.

Ques. 4. Have you settled or agreed to settle or proposed to settle with any of the other Companies interested in your loss, on any other basis than that furnished the Hartford Insurance Co.? Ans. Deponent declines to answer this question, or any further questions as to the mode of settlement with the other Companies interested in the loss.

Ques. 5. Do you decline to answer the last question? Ans. I do.

Ques. 6. Has O. Curtis, the adjuster of the Ætna Ins. Co., paid or agreed to pay you the full amount of their policy on your stock? Ans. They have agreed to settle on the same basis as the Phœnix Ins. Co. and City Fire Ins. Co., and we have agreed to accept it, and expect the money every day.

This fact should have been submitted to the jury disembarrassed from any conjectures as to the materiality of the questions put. If the questions put were touching the loss, then they were material.

Again. The court erred in submitting the question as to the materiality of the questions to the jury.

The question was one of law for the court to decide, and not of fact for the jury to find. Whether those questions relate to the loss or not, the jury might find as a matter of fact, but whether or not they were *material* was a question of law.

But these questions were material. Any statement made by the assured in his examination or in his proofs of loss, calculated or intended to influence the company in their action, is material. For if one of several insurance companies, after an examination of the facts, have decreed either to pay or not to pay, such fact would necessarily exert an influence upon other companies interested in the same loss, and any representations concerning such fact could be made for no other purpose than to influence the conduct of the company to whom such representations were made.

The plaintiff, Charles Weide, did state in his examination that he had settled with the Phœnix and City Fire Insurance companies on the basis of proofs as furnished to the Hartford, and that they had paid their loss with a discount slightly more than the usual interest for sixty days, in consideration of immediate payment.

The statement was knowingly and wifully false. The discount was nearly fifty cents on the dollar. How much the plaintiffs had received from other companies was material, and the statement that with the three companies named settlements had been effected for substantially the face of the policy, could have been made for no other purpose than to deceive or mislead the Company to whom such statements were made.

The proposition to the Ætna Insurance Company does not profess upon its face to be a compromise, but proposed as a basis of settlement to *place* the loss at $29,261.30. This was substantially an admission that such was their total loss. Questions relating to such propositions were clearly questions relating to the loss and damage, and the plaintiffs claim thereupon. A refusal to answer such questions by the plaintiffs was a violation of their contract. A false answer to them was fraud. Whether the fraud succeeded is a question of no moment, for the policy denounces not only all fraud, but all *attempt* at fraud. An attempt to deceive and mislead an insurance company, upon a point so important, can hardly be considered as anything else than an attempt to defraud them, and the failure of the attempt cannot release the parties from the the penalties which they themselves have agreed shall follow it.

The Court also, at the instance of the plaintiffs, instructed the jury that, under the conditions of the policy, the plaintiffs were bound to answer only such questions as tended to inform the Company as to the *amount* and circumstances of the loss, or such facts as were proper to inform the Company as to the correctness of the plaintiffs' claim.

This is clearly error.

As we have already seen, the contract itself provides that the insured shall answer all questions touching their knowledge of *anything relating* to the loss or damage, or to their claim thereupon. But, by the instruction given, the Court below limited such inquiries to the *amount and circumstances of the loss.* Thus, any question which might lead to a conclusion as to the *good faith* of the parties in making the claim, but which did not directly relate either to the *amount* of the loss, or to the *circumstances* under which it occurred, would be excluded.

It might happen, that the plaintiffs had sustained loss to the full amount claimed by them, and that the fire was purely the result of accident, and yet they not be entitled to recover.

Any fraud or false swearing in their proof of loss or in their examination, would work a forfeiture of such right.

For these reasons, it is submitted that the judgment of the Court below should be reversed.

EMERY A. STORRS,
Att'y for Plaintiff in Error.

SUPREME COURT

OF THE

UNITED STATES.

The Home Fire Insurance Company,
Plaintiff in Error,

vs.

Charles Weide and Joseph R. Weide,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

LORENZO ALLIS,
Of Counsel for Defts. in Error.

In the Supreme Court of the United States.

THE HOME FIRE INS. COMPANY,
Plaintiff in Error,
vs.
CHARLES WEIDE AND JOSEPH R. WEIDE,
Defendants in Error.

I.

The question as to the admissibility of the books, &c., was disposed of in the Ætna Insurance Company vs. Weide, 9 Wall, 677.

II.

The questions put to the witness Borup, on page 16 of the printed record, as to what average amount the defendants in error carried or had on hand during the year, and as to what amount they carried or had on hand at the time of the fire; and as to what amount they ought to have had on hand at the time of the fire, are, in addition to the general objection to that sort of proof, obnoxious to the further objection, that they do not require the witness to state facts, but to give his opinion or conclusion from a supposed state of facts.

III.

The two offers immediately preceding these questions, are,

in addition to the general objection to the character of the proof offered, obnoxious to the further objections,

First.—That it was not shown, nor offered to be shown, that the witnesses had (supposing it to be possible for any one to have) any personal knowledge as to the fact.

Second.—The offers are to show the average proportion of stock on hand to the annual sales of grocery merchants generally, wholesale merchants, retail merchants, and those doing both kinds of business. While, if the usual proportion in the case of wholesale merchants could be reliably ascertained, we might therefrom conjecture how much stock a particular wholesale merchant had at a specified time, no such conjecture could be made from the average proportion of all merchants, wholesale, retail and mixed.

IV.

But aside from the foregoing objections, such testimony was inadmissible to show the amount and value of the stock held by defendants in error at the time of the fire.

First.—The testimony of each witness on the subject must, from necessity, be based mainly on hearsay; for though each might be able to state from personal knowledge how the fact was as to his own business, he could not state how it was with respect to the business and transactions throughout the period designated, of other houses, except by conjecture, or from what had been told him by others supposed to have knowledge of such business and transactions.

Second.— If any witness could possibly give such testimony from personal knowledge, still it would be too remote and speculative, to furnish any reliable indication of how much defendants in error had on hand at the time of the fire. Phœnix Ins. Co. vs. Philip, 13 Wendell, 81.

V.

The requests of plaintiff in error for instructions to the

jury, marked in the printed record, 1st, 2d, 3d, 4th, 5th and 6th, were all improper, especially so under the issues made by the pleadings.

First.—The facts embraced within the requests are not pleaded either in abatement, nor as a defence to the cause of action.

In setting forth the terms of the policy, the answer (page 7 of printed record) states as one of them that the assured "if required should be examined under oath by any person ap- "pointed by the company, touching all questions relating to "the loss, and subscribe such examination when reduced to "writing." The only cause of forfeiture set forth as within the terms of the policy is: "all fraud or attempt at fraud on "the part of the assured shall cause a forfeiture of all claim "under this policy." It is not pleaded that a bare refusal to answer a question, shall, by the terms of the policy, either cause a forfeiture or postpone the time when the loss shall become payable.

The third defence, the only affirmative defence pleaded, alleges a refusal, thus: "that said plaintiffs and each of them "have and did wholly refuse to answer questions relating to "the said loss propounded to them by the agent of said com- "pany, and this defendant, as required by the terms and con- "ditions of said policy as above stated, and about the last of "March or first of April, 1867." No effect is claimed for these refusals, standing alone and distinct from the charge of fraud, in which the statement of them occurs. In this charge divers statements and acts of defendants in error, among them these refusals, are set forth with the further fact "that said plaintiffs "have so made such statements and representations, and done "such acts and things as aforesaid, knowing the same to be "false and fraudulent, and *with intent to defraud* said defend- "ant as aforesaid." And the effect claimed is, that "thereby and by reason thereof," (that is by reason of such statements and acts being made and done with such fraudulent intent) "all "claim under said policy is forfeited and made null and void "by the terms thereof," referring of course to that condition

of the policy that "all fraud or attempt at fraud on the part "of the assured shall cause a forfeiture of all claim under this "policy." To make a good defence under this provision the "intent to defraud" is essential. If the jury were satisfied that the inquiries were as to matters material for the company to know, and that the refusals to answer were with intent to defraud, then the defence would be made out as pleaded. But if the refusals were made under an honest, though mistaken, view of the parties' rights, then the defence fails. And in view of the purpose for which the refusals were pleaded, the requests above referred to are all wrong, because they entirely ignore the intent with which the refusals were made.

Proof of a refusal to answer proper questions put to the assured by the company, whether the assured was at the time under oath or not, would be admissible under the charge of fraud, even though the policy did not require the assured to be examined under oath.

What makes it still more evident that the refusals were pleaded only as an element of the fraud charged, is that the answer does not bring them within the terms of the policy. To show them a breach of the term providing for an examination under oath, the answer should allege that some person was "appointed by the company" for the purpose. Any *agent* would not do. Also that such examination was required of the assured, and that they refused to undergo such examination under oath, or that being sworn for the purpose they refused to answer some proper question put to them.

The answer in pleading the refusals does not show that the agent had any authority to require an examination under oath, nor that such an examination was ever required or had.

Second.—The requests were wrong also, because they assume either that the assured is bound to answer any question, whether proper and material or not, or that if the question must be proper and material, its propriety and materiality is purely a question of law. It can hardly be claimed that under the condition of the policy as pleaded in the answer, the assured were, when examined under oath, bound to answer every conceivable

question which the person conducting the examination might think fit to put. The questions must relate to the loss. The object of the condition is manifest. It is to enable the company to get information of every fact within the knowledge of the assured bearing on the loss, and proper and necessary for the company to learn and consider in determining on the justness of the claim. In such examination good faith and honesty should be required of each party to the other. It should be a bona fide effort to obtain information for the company to determine whether it would pay any and how much of the claim. We submit that the assured is not bound to answer any question put for the sole purpose of making evidence on which to resist a suit.

Suppose it appears on the trial, that at the time of the examination, the company had full knowledge of the fact to which the question relates and that the question is put solely to prepare a defence to an action on the policy, would it be proper and material to the purposes of the examination as contemplated by the policy?

If the materiality may depend upon facts and circumstances, other than the mere putting of the question, then it must be left to the jury under the instructions of the Court.

VI.

The qualifications which the Court put to the requests above referred to, were proper so far as they went. The defendants in error, however, had a right to complain that the requests, with the qualification as given, omitted any reference to one essential element, to make the law so stated, as applicable to the issues in the case, correct, to wit: the *intent* with which the refusals were made. But the whole charge taken together states the law correctly as applicable to such issues, and very clearly and fully as to what facts would make out the charge of fraud.

LORENZO ALLIS,
Of Counsel for Deft's. in Error.